



Commission on Labor

## AGENDA

October 18, 2021 - 7pm

To join the meeting online:

<https://us06web.zoom.us/j/89253053123>

+Meeting ID: 880 8243 6118

+One tap mobile

++16699006833,,88082436118# US (San Jose)

++12532158782,,88082436118# US (Tacoma)

Commission Secretary: Nathan Dahl ([ndahl@cityofberkeley.info](mailto:ndahl@cityofberkeley.info); 510-981-5405)

***Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Commission on Labor Subcommittee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.***

### **Preliminary Matters**

1. Roll Call

2. Public Comments

*The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.*

### **Action Items**

3. Discussion of Fair Work Week Policy Recommendations.

### **Adjournment**

**\*\*\*\* MEETING PROCEDURES \*\*\*\***

Public Testimony Guidelines: All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

**Procedures for Correspondence to the Commissioners:**

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker. Written comments must be directed Commission on Labor, c/o Nathan Dahl, Secretary 2180 Milvia, 2<sup>nd</sup> Floor Berkeley, CA 94704, or via e-mail to: [Ndahl@cityofberkeley.info](mailto:Ndahl@cityofberkeley.info).

**Secretary:**

Nathan Dahl

Health, Housing & Community Services Department  
(510) 981-5405

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**CHAPTER 13.110  
FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

<b>13.110.010</b>	<b>Definitions.</b>
<b>13.110.020</b>	<b>Applicability.</b>
<b>13.110.030</b>	<b>Waiver through Collective Bargaining</b>
<b>13.110.040</b>	<b>Advance Notice of Work Schedules.</b>
<b>13.110.050</b>	<b>Notice, Right to Decline, and Compensation for Schedule Changes.</b>
<b>13.110.060</b>	<b>Offer of Work to Existing Employees.</b>
<b>13.110.070</b>	<b>Right to Rest.</b>
<b>13.110.080</b>	<b>Right to Request a Flexible Working Arrangement.</b>
<b>13.110.090</b>	<b>Prohibition on Refusing Hours to Prevent the Application of Benefits.</b>
<b>13.110.100</b>	<b>Notice and Posting.</b>
<b>13.110.110</b>	<b>Implementation.</b>
<b>13.110.120</b>	<b>Enforcement.</b>
<b>13.110.130</b>	<b>Private Rights of Action.</b>
<b>13.110.140</b>	<b>Remedies.</b>
<b>13.110.150</b>	<b>Retaliation Prohibited</b>
<b>13.110.160</b>	<b>Retention of Records.</b>
<b>13.110.170</b>	<b>City Access.</b>
<b>13.110.180</b>	<b>No Preemption of Higher Standards.</b>
<b>13.110.190</b>	<b>Severability.</b>

**13.110.010 Definitions**

As used in this chapter, the following terms shall have the following meanings:

- (a) “Calendar week” shall mean a period of seven (7) consecutive days starting on Sunday.
- (b) “City” shall mean the City of Berkeley.
- (c) “Covered employer” shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.020 – Applicability.
- (d) "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.
- (e) “Employee” shall mean any person who:
  - (1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City of Berkeley for an employer; and
  - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission.
- (e) “Employer” shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through

Title 9 of the Berkeley Municipal Code. (g) “Firm” shall mean a business organization or entity consisting of one (1) or more establishments under common ownership or control. In the case of a franchise, the franchisor shall be considered the firm.

(x). “Fast food restaurant” shall mean a restaurant as defined in Section XXXX of the Berkeley xxx where patrons order or select food or beverage items and pay before eating and such items may be consumed on or off the premises, or delivered to the customer’s location. It shall not include an establishment that provides food services to patrons who order and are served while seated and pay after eating; nor shall it include an establishment that offers alcoholic beverages with meals, regardless of when or where food is ordered and payment is made

**Commented [DN1]:** The Zoning Ordinance does not define ‘Fast Food Restaurants’ but does define carry-out food service if the intent is to apply the policy only to carry out food service establishments. Note that fast food establishments are actually quick service restaurants as there is generally on site sitting available for on-site consumption.

(h) “Franchise” shall have the meaning in California Business and Professions Code Section 20001.

(i) “Franchisee” shall have the meaning in California Business and Professions Code Section 20002.

(j) “Franchisor” shall have the meaning in California Business and Professions Code Section 20003.

(k) “Good faith” shall mean a sincere intention to deal fairly with others.

(lx) “Hotel” shall mean A building composed of Tourist Hotel Rooms as defined in BMC Section 23.04.010

(m) “Predictability pay” shall mean wages paid to an employee, calculated on an hourly basis at the employee’s regular rate of pay as that term is used in 29 U.S.C. Section 207(e), as compensation for schedule changes made by a covered employer to an employee’s schedule pursuant to Section 13.110.040 , in addition to any wages earned for work performed by that employee.

(nx). “Restaurant” shall mean a Food Service Establishment as defined in BMC Section 23.04.010

(o) Retail Product Store shall mean an establishment engaged in the sales of personal, consumer or household items to the customers who will use such items as defined in BMC Section 23.04.010.

**Commented [2]:**  
Correct reference?

(px) “Shift” shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

**Commented [DN3R2]:** Yes, if the intent is to apply to all food service establishments.

(qe) “Work schedule” shall mean all of an employee’s shifts, including specific start and end times for each shift, during a calendar week.

### 13.110.020 Applicability

All sections of this chapter shall apply to employers as specified in subsections A and B of this section.

A. All sections of this chapter shall apply to: tThe City of Berkeley as an employer and all employers in the City of Berkeley who:

- (1) Have fifty (50) or more Employees ~~globally, or~~ in the City of Berkeley
- (2) Are Franchisees ~~associated with a Franchisor or a network of Franchises with twelve (12) or more locations globally and~~ have fifty (50) or more Employees in the City of Berkeley

**Commented [4]:**  
How do we track this? EDD does not keep this data.

(a) In determining the number of employees performing work for a covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

**Commented [5]:**  
Added per Subcommittee meeting 8/26/21

**Commented [6]:**  
For purposes of Paid Sick Leave we track employee count quarterly using EDD data in an investigation process.

(b) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer under this chapter. Separate entities will be considered an integrated enterprise and a single employer under this chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

**Commented [7]:**  
Still considering whether to count global numbers and/or local numbers. And how to handle franchisees.

- (1) Degree of interrelation between the operations of multiple entities;
- (2) Degree to which the entities share common management;
- (3) Centralized control of labor relations; and
- (4) Degree of common ownership or financial control over the entities.

**Commented [8]:**  
Question for other jurisdictions – How is this section applied and is it needed?

There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this chapter as long as (i) the separate legal entities operate substantially in separate physical locations from one another, and (ii) each separate legal entity has partially different ultimate ownership.

**B. All sections of this chapter shall apply to**

- (1) The City of Berkeley as an employer
- (2) Retail firms
- (3) Hotels
- (4) Restaurants and Fast food restaurants

**Commented [DN9]:** Retail Products Store

**Commented [DN10]:** Food Service Establishments

**13.110.030 Waiver through Collective Bargaining**

To the extent permitted by law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this chapter.

**13.110.040 Advance Notice of Work Schedules.**

(a) Initial Estimate of Minimum Hours.

(1) Prior to or on commencement of employment, a covered employer shall provide each employee with a good faith estimate in writing of the employee's work schedule.

(2) Prior to or on commencement of employment, the employee may request that the covered employer modify the estimated work schedule provided under subsection (a)(1) of this section. The covered employer shall consider any such request, and in its sole discretion may accept or reject the request; provided, that the covered employer shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two (2) Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two (2) weeks' notice of their work schedules by doing one (1) of the following ~~at least every fourteen (14) days (on a "biweekly schedule")~~: (1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or (2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees. If the covered employer changes an employee's work schedule after it is posted and/or transmitted, such changes shall be subject to the notice and compensation requirements set forth in this chapter.

### **13.110.050 Notice, Right to Decline, and Compensation for Schedule**

**Changes.**(a) A covered employer shall provide an employee notice of any change to the employee's posted or transmitted work schedule. The covered employer shall provide such notice by in-person conversation, telephone call, email, text message, or other electronic communication. If the Employee accepts the additional shift via a verbal conversation, the Employer shall immediately follow up with written confirmation to document the agreement and when it was accepted. This notice requirement shall not apply to any schedule changes the employee initiates, such as employee requested sick leave, time off, shift trades, or additional shifts.

(b) Subject to the exceptions in subsection (d) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than fourteen (14) days.

(c) Subject to the exceptions in subsection (d) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule: (1) with less than fourteen (14) days' notice, but twenty-four (24) hours or more notice to the employee: one (1) hour of predictability pay; (2) with less than twenty-four (24) hours to the employee, (i) four (4) hours or the number of hours in the employee's scheduled shift, whichever is less, when hours are canceled or reduced; (ii) one (1) hour of predictability pay for all other changes. The compensation required by this subsection shall be in addition to the employee's regular pay for working that shift.

**Commented [11]:**  
Added per Subcommittee meeting 8/26/21

(d) Exceptions. The requirements of this section shall not apply under any of the following circumstances:

- (1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;
- (2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
- (3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), war, civil unrest, strikes, or other cause not within the covered employer's control;
- (4) Mutually agreed-upon work shift swaps or coverage among employees.
- (5) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift.

(e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

(f) To accommodate the following transitions in shifts:

- (1) If an employee works past the end of a scheduled shift to complete service to a customer, which service would entitle the employee to receive a commission, tip, or other incentive pay based on the completion of that service, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.
- (2) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

### **13.110.060 Offer of Work to Existing Employees.**

(a) Subject to the limitations herein, before hiring new employees or contract employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section requires covered employers to offer to part-time employees only up to the number of hours required to give the part-time employee thirty-five (35) hours of work in a calendar week. In order to help analyze if current employees may be interested in additional work, the Employer may ask employees in advance to fill out statements of interest of additional work and which positions employees would be interested in covering.

(b) A covered employer has discretion to divide the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student; and (2) the employer may not distribute hours in a manner intended to avoid application of the Patient Protection and Affordable Care Act, [42 U.S.C. Section 18001](#), or the granting of any other benefits that an employee earns based on hours worked.

**Commented [12]:**  
Added per Subcommittee meeting 8/26/21

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) For additional work ~~for an expected duration of more than two (2) weeks,~~ the part-time employee shall have ~~seventy-two (72)~~twenty-four (24) hours to accept the additional hours, after which time the covered employer may hire new employees to work the additional hours.

~~(2) When the covered employer's offer of additional work under this section is for an expected duration of two (2) weeks or less, the part-time employee shall have twenty-four (24) hours to accept the additional hours, after which time the covered employer may hire new employees to work the additional hours.~~

(3) The twenty-four (24) ~~or seventy-two (72)~~ hour periods referred to in this subsection begin either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace where notices to employees are customarily posted. Covered employers may post the notice electronically on an internal website in a conspicuous location and which website is readily accessible to all employees. The notice shall include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the covered employer anticipates requiring coverage of the additional hours, and the process by which part-time employees may notify the covered employer of their desire to work the offered hours.

(e) The covered employer shall retain each written offer no less than three (3) years as required under Section [13.110.150](#).

(f) This section shall not be construed to require any covered employer to offer employees work hours paid at a premium rate under California Labor Code Section [510](#) nor to prohibit any covered employer from offering such work hours.

### **13.110.070 Right to Rest.**

(a) An employee has the right to decline work hours that occur:

- (1) Less than eleven (11) hours after the end of the previous day's shift; or
- (2) During the eleven (11) hours following the end of a shift that spanned two (2) days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half (1-1/2) times the employee's regular rate of pay for any hours worked less than eleven (11) hours following the end of a previous shift.

### **13.110.080 Right to Request a Flexible Working Arrangement.**

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year

**Commented [13]:**  
Need for two different time periods? 9/8/21



employment. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

### **13.110.090 Prohibition on Refusing Hours to Prevent the Application of Benefits.**

Employers may not distribute new hours or refuse employees additional hours for the reason that such an increase in hours would result in the application of the Patient Protection and Affordable Care Act, 42 U.S.C. Section 18001 or the granting of any other benefits that an employee earns based on hours worked, with the exception of overtime benefits.

### **13.110.100 Notice and Posting.**

- (a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.
- (b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

### **13.110.110 Implementation.**

- (a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines or rules for such purposes within 90 days of the date on which this Chapter becomes effective. The Department shall seek out partnerships with community-based organizations and collaborate with the Berkeley Commission on Labor to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.
- (b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

**Commented [14]:**  
May need more lead time for outreach and education and program implementation and staffing. Emeryville had soft roll out and 1 year before active enforcement.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

### **13.110.120 Enforcement.**

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be one thousand dollars (\$1,000.00) for each employee retaliated against.

(2) A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than twenty-four (24) hours' advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

### **13.110.130 Private Rights of Action.**

An employee claiming harm from a violation of this chapter may bring an action against the employer in court to enforce the provisions of this chapter and shall be entitled to all remedies available to remedy any violation of this chapter, including but not limited to back pay, reinstatement, injunctive relief, and/or civil penalties as provided herein. The prevailing party in an action to enforce this chapter is entitled to an award of reasonable attorney's fees, witness fees and costs.

#### **13.110.140 Remedies.**

The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.
2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.
4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

#### **13.110.150 Retaliation Prohibited.**

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within one hundred twenty (120) days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

**13.110.160 Retention of Records.**

Each employer shall maintain for at least three (3) years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

**13.110.170 City Access.**

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

**13.110.180 No Preemption of Higher Standards.**

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

**13.110.190 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.



**Fair Workweek Policy Comparison**

**Comprehensive Municipal Fair Workweek Laws<sup>i</sup>**

	<b>Emeryville</b> <i>Mun. Code Tit. 5 Ch. 39</i>	<b>Seattle</b> <i>Mun. Code Tit. 14 Ch. 22</i>	<b>San Francisco</b> <i>Police Code § 3300F.3 &amp; Art. 33G</i>	<b>Philadelphia</b> <i>Philadelphia Code Title 9 Ch. 9-4600</i>	<b>New York City</b> <i>Admin. Code Tit. 20 Ch. 12</i>		<b>Chicago</b> <i>Mun. Code Tit. 1 Ch. 1-25</i>
					Fast Food	Retail	
<b>Covered Employees &amp; Employers</b>	Retail: 56 employees globally. Fast Food: 56 employees globally and 20 employees within Emeryville.	Retail and fast food: 500 employees globally. Full service restaurants: 500 employees and 40 locations globally.	“Formula retail establishments” with 40 retail establishments globally AND 20 employees in San Francisco; includes building services workers at covered locations.	Retail, food service and hospitality establishments with 250 employees and 30 locations globally.	Hourly employees in Fast Food chains with at least 30 locations nationally.	20 or more employees.	Building Services, Healthcare, Hotels, Manufacturing, Restaurants, Retail, and Warehouse Services employers with 100 employees globally (or 250+ for non-profits), at least 50 of whom are Covered Employees.

<b>Advance Notice of Work Schedules</b>	2 weeks	2 weeks	2 weeks	2 weeks starting January 2021; 10 during first year.	2 weeks	72 hours	2 weeks starting July 2022; 10 days during first two years.
<b>Good Faith Estimate of Weekly Work Hours</b>	At time of hire.	At time of hire and updated annually and when there is a significant change in work schedule. Estimate will include the median number of hours employee can expect to work each week.	At time of hire. Estimate will include employee's expected minimum number of scheduled shifts per month, and the days and hours of those shifts.	At time of hire and updated when there is a significant change in work schedule. Estimate will include average weekly work hours, days of the week, times/shifts and work locations.	At time of hire and updated when there is a significant change in work schedule. Estimate will include weekly work hours, days, times and work locations.	N/A	Prior to or on commencement of work. Covers first 90 days of employment. Estimate will include average weekly hours, on-call, subset of days and times employee can be expected to work and not work.
<b>Right to Decline Hours Added After Posting</b>	Yes	Yes	No	Yes	Yes	Yes	Yes
<b>Compensation for Schedule Changes ("Predictability Pay")</b>	4 hours or the number of hours in the employee's scheduled shift, whichever is less, when the employer cancels or reduces hours	Half of scheduled hours when hours are canceled or reduced. 1 hour for all other employer-initiated changes after schedule is posted.	1 hour of predictability pay for all required changes with 1-7 days' notice. For changes with less than 24 hours' notice, 2 hours for any required change to a	Half of scheduled hours when hours are canceled or reduced. 1 hour for all other employer-initiated changes after schedule is posted.	Changes without loss of hours: \$10 for each change with 7-14 days' notice; \$15 each with less than 7 days' notice.	N/A – Shifts cannot be added without employee consent or cancelled within 72 hours.	1 hour of predictability pay for each shift in which employer adds hours, changes date/time without loss of hours, or cancels

	with less than 24 hours' notice. 1 hour for all other employer-initiated changes after schedule is posted.		shift of 4 hours or less, or 4 hours for any "required" change to a shift of more than 4 hours.		Reduction in hours: \$20 for each change with 7-14 days' notice; \$45 for each change with 1-7 days' notice; \$75 for each change with less than 24 hours notice.		shifts with more than 24 hours' notice. Half pay for any shifts cancelled or hours cut with under 24 hours' notice, including on-call shifts.
<b>Exceptions to Predictability Pay and Advance Notice Requirements (more detail available upon request)</b>	Employee-initiated shift swaps; closures due to threats, recommendation of civil authorities, utility failures, or acts of God.	Employee-initiated schedule changes and shift swaps; closures due to threats, recommendation of civil authorities, utility failures, or acts of God; additional hours employees accept voluntarily in response to a mass communication to cover unanticipated absence; voluntary shift extensions to address unanticipated	Employee-initiated schedule changes; closures due to threats, recommendation of civil authorities, utility failures, or acts of God; another employee's unanticipated absence or absence due to disciplinary action; mandatory overtime.	Employee-initiated schedule changes and shift swaps; closures due to threats, recommendation of civil authorities, utility failures, natural disaster, declared state of emergency, or severe weather conditions that endanger employees; additional hours employees accept voluntarily in response to a mass communication to cover unanticipated absence; changes of	Employee-initiated schedule changes and shift swaps; closures due to threats, recommendation of civil authorities, utility failures, shutdown of public transportation, natural disaster or declared state of emergency, or severe weather conditions that endanger employees (predictability pay is owed to	Employee-initiated schedule changes and shift swaps; closures due to threats, recommendation of civil authorities, utility failures, shutdown of public transportation, natural disaster or declared state of emergency.	Closures due to threats, recommendation of civil authorities, public utility failure, acts of nature. Documented, just-cause discipline. Mutually agreed shift trades or changes. Banquet cancellations or significant changes. Manufacturing and healthcare- specific exceptions.

		customer needs; hours cut due to the employee's own discipline; hours added pursuant to the Access to Hours provision.		less than 20 minutes; termination of employment or documented multi-day suspension; ticketed events and banquets; changes in the first 24 hours after the schedule is posted.	employee covering for a scheduled employee who cannot safely travel to the job site); shifts for which overtime is owed.		
<b>Right to Rest ("Clopening" protections)</b>	Right to decline shifts with less than 11 hours and premium pay (1.5x regular rate) for hours worked with less than 11 hours' rest, if shift accepted.	Right to decline shifts with less than 10 hours and premium pay (1.5x regular rate) for hours worked with less than 10 hours' rest, if shift accepted.	N/A	Right to decline shifts with less than 9 hours and \$40 compensation if shift accepted.	Right to decline shifts with less than 11 hours rest and \$100 compensation if shift accepted.	N/A	Right to decline shifts with less than 10 hours and 1.25x pay if accepted.
<b>Offer of Work to Existing Employees ("Access to Hours")</b>	Hours offered to part-time workers up to 35 hours/week. Distribution of hours among employees must be non-discriminatory and cannot be used to avoid application	Workers are eligible for hours up to the overtime limit. Employer has discretion to distribute hours according to usual procedure, and is not required to break up full work shifts. Exceptions for	Hours offered to part-time workers up to 35 hours/week. Employer discretion to divide shifts among employees. An employer must allow an existing part-time employee to work a portion of an offered shift, but	Workers are eligible for hours up to the overtime limit. Employers that regularly schedule workers across locations must offer hours to employees at other locations before hiring new employees. Distribution of hours	Workers are eligible for hours up to the overtime limit. If no employees at location accept available hours, employer shall offer hours to employees at other locations before	N/A	Workers are eligible for hours up to the overtime limit. If offered shifts are not accepted by Covered Employees, the shifts shall be offered to temporary or



	of the Affordable Care Act. Schedule change compensation applies if eligible.	seasonal employment and approved “diversity” and “young adult” hiring programs. Employer may restrict offer to employees who have opted in to an “access to hours” list and provided their availability. An employee may not qualify for the additional hours if overtime or predictability pay would be required.	need not allow an existing employee to work a shift of less than four hours, nor must an employer split a shift if it would require hiring a new employee to work a shift of less than four hours.	among employees must be non-discriminatory and cannot be used to avoid application of the Affordable Care Act. Schedule change compensation applies if eligible. Exception for trainees. Employers must provide employees with a written Access to Hours policy.	hiring new employees. Employer’s system for distributing shifts cannot be discriminatory. Schedule change premiums apply if eligible. An employer must allow an existing part-time employee to work a portion of an offered shift, unless if it would require hiring a new employee to work a shift of less than three hours.		seasonal workers who have worked on behalf of the Employer for two or more weeks. Employer’s system for distributing shifts cannot be discriminatory.
<b>Right to Request Schedule Accommodations</b>	Employees can request schedule modifications (including additional hours, limitations on availability, changes in start/end times)	Employees can make scheduling requests without retaliation. The employer must discuss the request in an interactive process.If request is due to a “major life event” the Employer	Right to request is limited to scheduling arrangements needed to accommodate caregiving obligations for a child, elderly parent, or family member with a	Employees can make scheduling requests (including additional hours, limitations on availability, changes in start/end times) without retaliation.	Employees can request, and the employer must grant, up to two temporary work schedule changes per year for a total of two work days	Employees can request, and the employer must grant, up to two temporary work schedule changes per year for a total of two work days for	Employees can make scheduling requests (including additional hours, limitations on availability, changes in start/end times).

	without retaliation.	must grant the request or identify in writing a bona fide business reason for denial.	serious health condition. Such requests trigger an interactive process and must be responded to in writing; denial must identify bona fide business reason.		for personal events.	personal events.	Response must be written.
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**Comprehensive State Fair Workweek Laws<sup>ii</sup>**

	<b>Oregon</b> <i>ORS § 653.412 et seq.</i>
<b>Covered Employees &amp; Employers</b>	Hospitality, Retail and Fast Food establishments with 500 or more employees globally.
<b>Advance Notice of Work Schedules</b>	1 week as of July 2018, 2 weeks beginning July 2020.
<b>Good Faith Estimate of Weekly Work Hours</b>	An employer shall provide new employees with a written good faith estimate of work schedule. Estimate will include median number of hours the employee can expect to work in an average one-month period.
<b>Right to Decline Hours Added After Posting</b>	Yes

<b>Compensation for Schedule Changes (“Predictability Pay”)</b>	Half of any pay when hours are canceled or reduced. 1 hour for all other employer-initiated changes after schedule is posted.
<b>Exceptions to Predictability Pay and Advance Notice Requirements (more detail available upon request)</b>	Employee-initiated schedule changes and shift swaps; Employer changes the start or end time of an employee’s work shift by 30 minutes or less; closures due to threats, recommendation of civil authorities, utility failures, or acts of God; Operations hours change or are substantially altered because of changes to a ticketed event outside employers control; employee consents to work hours from voluntary standby list; employee consents to cover additional hours to address unanticipated customer needs or unexpected employee absence.
<b>Right to Rest (“Clopening” protections)</b>	Right to decline shifts with less than 10 hours and premium pay (1.5x regular rate) for hours worked with less than 10 hours’ rest, if shift accepted.
<b>Offer of Work to Existing Employees (“Access to Hours”)</b>	N/A
<b>Right to Request Schedule Accommodations</b>	Employees may identify any limitations or changes in the employee’s work schedule availability. The employee may also request not to be scheduled for work shifts during certain times or at certain locations without retaliation.

<sup>i</sup> This lists omits ordinances in San Jose and Sea-Tac that guarantee employees opportunities for full-time work before the employer can hire and an ordinance in Washington DC that guarantees building services employees 30 hours of work each week.

<sup>ii</sup> This lists omits the eight states (plus the District of Columbia) that require minimum payments for any day that an employee reports to work but is sent home early, as well as the two states that give employees the right to request schedule accommodations.



## **On-call scheduling by another name: how the “Standby List” hurts workers**

Fair Workweek policies provide working people with work hours they can count on, so they can care for their families, stay healthy, go to school, and earn enough to thrive. The laws require employers to post schedules two weeks in advance and pay employees for subsequent changes to their work hours. This “predictability pay” compensates workers for the flexibility that enables employers to adjust labor hours to meet changing demand. It also incentivizes employers to minimize schedule changes that disrupt the lives of workers and their families.

Oregon’s statewide Fair Workweek law provides that employers can invite workers to join a “voluntary standby list.” Employers can offer hours to employees on the standby list without compensating them for their flexibility in picking up the shift on short notice. Companies love the standby list because it’s a sneaky way to **bring back on-call scheduling**, which over a dozen retailers promised to halt following inquiries by state Attorney Generals.<sup>i</sup>

### ***The standby list undermines Fair Workweek’s goal of delivering stability workers need.***

The just-in-time business model used by retail and hospitality companies relies on reducing labor costs as the primary route to profitability.<sup>ii</sup> Studies show that front-line managers experience tremendous pressure to maintain a strict ratio between the number of hours employees worked and store sales or customer traffic.<sup>iii</sup> To stay within the labor budget dictated by corporate, **managers check their labor ratios daily or even hourly, adjusting schedules for the rest of the week.**<sup>iv</sup>

Posting schedules only a few days in advance gives managers “labor flexibility,” but wreaks havoc on workers’ lives.<sup>v</sup> If managers are required to post schedules two weeks in advance, they will evolve other strategies to preserve labor flexibility. **A policy that only compensates employees when hours are reduced, not added, will encourage managers to post schedules that include the fewest possible hours.** Managers will then simply use the standby list to add shifts as they deem necessary – just as they used on-call scheduling – undermining the goal of increasing the stability and predictability of workers’ hours and earnings.

### ***The standby list keeps working moms from earning enough to support their families.***

Although the standby list is supposedly “voluntary,” it puts workers in an impossible position: either join the standby list and scramble to pick up last-minute shifts, or rely on your posted schedule and miss out on all the income opportunities of short-notice shifts. **For working moms, accepting last-minute shifts is rarely an option, so they end up with few hours – and not enough income to pay their bills.**

The standby list hurts women in another way, too. Companies that rely on just-in-time scheduling often require or pressure employees to maintain “open availability” (the ability work all days and times) in order to maximize manager flexibility to adjust schedules.<sup>vi</sup> **By incentivizing managers to staff up at the last minute, the standby list will increase managers’ demands for “open availability” so that short-notice shifts can be easily filled.** In short, the stand-by list makes gender inequality worse.

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Some companies explicitly require open availability, and others make it a condition of full-time work or promotion. **In a recent survey of 1,100 retail workers, half said open availability was necessary to get a raise – and women were more likely than men to identify this barrier to advancement.**<sup>vii</sup> Open availability makes it impossible to provide healthy routines for kids and obtain quality childcare, which is scarce and expensive during non-traditional work hours. Working mothers who limit their availability are forced into underpaid part-time jobs, even if they want full time hours.<sup>viii</sup> This is one reason women in retail are concentrated in low-wage entry-level jobs and under-represented in supervisory and management roles.<sup>ix</sup>

***The standby list is unnecessary.***

Fair workweek laws enacted in cities around the country have not included a standby list – and the sky hasn't fallen. Employers pay one hour of compensation when employees agree to work with short notice. **If labor flexibility is key to corporate profits, it's only fair that a small portion of those profits compensate workers for their flexibility.** This compensation also ensures that employers are striving to accurately predict their labor needs, rather than expecting employees to put their lives on hold waiting for a last-minute call to come to work.

**Workers' demands for a fair workweek have pushed for an end to on-call scheduling. Don't let the standby list bring it back.**

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<sup>i</sup> Daniel Schneider, University of California at Berkeley, Kristen Harknett, University of California at San Francisco, "Working in the Service Sector in Philadelphia," Institute for Research on Labor and Employment (Feb. 2018). The data shows that just 38% of hourly workers in Philadelphia's service sector receive their work schedules 2 or more weeks before the start of the work week, and a third got a schedule less than a week in advance; 29% had worked on-call shifts in the last month 16% had had a work shift cancelled. Seventy-seven percent of workers wanted more stable and predictable schedules, and 74% of part-timers wanted more hours.

<sup>ii</sup> Susan Lambert (2014). "The Limits of Voluntary Employer Action for Improving Low-Level Jobs," in *Working and Living in the Shadow of Economic Fragility*, Marion G. Crain & Michael Sherraden, eds. Oxford University Press, p. 121.

<sup>iii</sup> Susan Lambert (2008) "Passing the buck: Labor flexibility practices that transfer risk onto hourly workers." *Human Relations* vol. 61(9), p. 1212.

<sup>iv</sup> See Lambert, "The Limits of Voluntary Employer Action," p. 123; Lambert, "Passing the buck," p. 1213.

<sup>v</sup> just 38% received their work schedules 2 or more weeks before the start of the work week, and a third got a schedule less than a week in advance; 29% had worked on-call shifts in the last month; and in that time, 16% had had a work shift cancelled. Seventy-seven percent of workers in Harknett's & Schneider's study wanted more stable and predictable schedules, 74% of part-time workers wanted more hours.

<sup>vi</sup> Susan Lambert, Anna Haley-Lock, and Julia Henly, "Schedule flexibility in hourly work: unanticipated consequences and promising directions," *Community, Work & Family* vol. 15(3) (2012), p. 305; Lambert, "Passing the buck," p. 1217.

<sup>vii</sup> "Job Quality and Economic Opportunity in Retail," Center for Popular Democracy (Nov. 2017), p. 16.

<sup>viii</sup> "Hour by Hour: Women in Today's Workforce," Center for Popular Democracy (May 2015), pp. 9-10.

<sup>ix</sup> "Data Brief: Retail Jobs Today," Center for Popular Democracy (Jan. 2016), p. 13.



## Applying Fair Workweek Laws to Franchise-Operated Businesses

Fair Workweek laws typically regulate large corporate chains, with a coverage threshold based on the total number of workers the business employs around the world. This overview explains how those thresholds apply to businesses that operate on a franchise model. Low-wage employees of franchised businesses, particularly in the fast food industry, experience unpredictable and ever-changing work hours, involuntary under-employment, and deep economic insecurity resulting from income volatility. These workers need the protections afforded by Fair Workweek legislation.

While franchise owners often characterize themselves as small business owners, **corporate headquarters exercise significant control over franchisees' scheduling practices**. Franchisees typically use the corporate franchisor's workforce management technology to generate and manage work schedules.

Most Fair Workweek laws regulate franchise-operated businesses in the same manner as any other large chain: by aggregating the total number of employees working for the same brand.

### **Fast Food Franchises are Widely Prevalent and Extremely Profitable**

Fast food franchises are the most common type of franchise, representing a quarter of all U.S. franchises.<sup>i</sup> McDonald's, the nation's largest fast food chain, operates more than 90% of its 36,000 restaurants as franchises.<sup>ii</sup> In 2017, McDonald's profits totaled **\$5.2 billion**.<sup>iii</sup>

### **Franchises Operate Like Highly Standardized Chains**

In exchange for access to a franchisor's brand, operational and technological systems, real estate, employee/manager training programs, and other core business tools, franchisees make payments to franchisors in the form of royalties, fees, and rental payments.<sup>iv</sup>

Corporate franchisors impose standardized policies that **control many major aspects of franchisees' daily operations**. McDonald's Corporation's requirements dictate franchisees' personnel policies and practices, working conditions, labor budgets and scheduling.<sup>v</sup>

Fast food franchisees have access to franchisors' proprietary **workforce management technology** to manage point-of-sale systems, payroll, and labor utilization rates, and are often

required or pressured to use these technologies. McDonald's Corporation strongly incentivizes franchisees to use all the features of its workforce management technology including its system for scheduling staff, timekeeping, tracking meals and break times, and rates of pay.<sup>vi</sup> These systems generate the **just-in-time work schedules**<sup>vii</sup> that negatively impact employees' lives – but can also be programmed to ensure compliance with Fair Workweek laws. Access to these technologies therefore makes compliance far more viable for franchisees than for small businesses that lack similar tools.

### **Franchisors Are Being Held Legally Responsible for Franchisees' Employment Practices**

Evidence of the integrated relationship between franchisees and corporate franchisors is leading courts and enforcement agencies to recognize franchisors as **joint employers**. In 2016, McDonald's Corporation [agreed to pay \\$3.75 million](#) to settle a lawsuit concerning overtime violations at various franchise locations in California.<sup>viii</sup> Following extensive investigation into wage and hour violations at Sonic Burger franchises by the U.S. Department of Labor (DOL), corporate owner Sonic Industries signed an agreement with DOL to promote compliance with labor standards at its franchise locations nationwide.<sup>ix</sup>

In an ongoing enforcement action against McDonald's franchisees for violating workers' organizing rights, the General Counsel of the National Labor Relations Board determined that McDonald's Corporation could be named as a joint employer.<sup>x</sup> Although the Trump Administration attempted to shield McDonald's from liability by settling these charges, a judge rejected the settlement because it minimized McDonald's obligations despite extensive evidence of McDonald's corporate control over franchise labor practices.<sup>xi</sup>

### **Models for Applying Employer Thresholds to Franchise-Operated Businesses**

#### Model #1: Full Chain Aggregation

Most commonly, policymakers have treated franchises like any other highly standardized chain, with the number of employees or locations in the **franchise chain** counted towards the threshold, regardless of the ownership of individual locations. This model can be used with both lower and higher employee thresholds.

This approach ensures **optimal coverage** of Fair Workweek laws. It also reflects that franchisees are far more similar to corporate-operated chains than to small businesses in a critical respect: their use of franchisor-provided **workforce management technology** that drives just-in-time scheduling but can also simplify compliance with fair workweek standards. This straightforward standard also ensures that both businesses and employees can easily determine whether the law applies to them.

Jurisdictions following the Full Chain Aggregation Model:

- Emeryville: 56 employees globally (retail); 56 employees globally and 20 employees within Emeryville (fast food)<sup>xii</sup>
- Seattle: 500 employees globally<sup>xiii</sup>
- New York City: At least 30 locations nationally<sup>xiv</sup>

### Model #2: Integrated Enterprise Analysis

This model accounts for the possibility that some franchises may not fully integrate their business practices. If a franchisee can show that it operates independently and the franchisor has limited influence on operations and workforce management, it may qualify as a small business under the law. The enforcement agency uses a **multi-factor test** to assess whether the franchisor-franchisee relationship constitutes an “**integrated enterprise.**” If so, employees across locations operated by different franchisees are aggregated to determine coverage.

This model is **not as effective** in implementing Fair Workweek laws, because it requires **significant time and resources** to obtain and analyze information about a franchise’s business operations to determine whether an “integrated enterprise” exists. It also creates **uncertainty for franchisees** as to whether or not they are required to comply with Fair Workweek laws, which could expose them to liability if they are covered as part of an integrated enterprise, but operated as though they were exempt.

In theory, this approach strikes a middle ground by evaluating whether a franchisee should be considered an exempt small business or a covered chain on a case-by-case basis. But with no evidence of franchisors that grant their franchisees true independence in operations, staffing and workforce scheduling, **there is little public policy rationale for adopting this approach** given the significant implementation challenges. If this model is used, the law should be clear that franchises are presumed to constitute integrated enterprises unless the franchise produces evidence to the contrary.

Jurisdictions following the Integrated Enterprise Analysis Model:

- Oregon: 500 or more employees globally<sup>xv</sup>

### Model #3: Aggregation by Franchisee

In this model, employees are not aggregated across franchisees, but the number of employees at **each franchise location operated by the same owner** are aggregated and counted towards the threshold.

This model has and should only be used with a **low threshold** (35 employees). A higher threshold would leave a significant portion of workers, particularly in the fast food industry, unprotected by Fair Workweek laws and vulnerable to volatile work hours and underemployment. If the threshold applicable to non-franchise businesses will be higher, policymakers considering this approach should adopt the 35-employee threshold for franchise-operated businesses in recognition of the compliance tools available to franchisees.

Jurisdictions following the Aggregation by Franchisee Model:

- San Jose: 35 employees<sup>xvi</sup>

*For more information or model policy, contact Rachel Deutsch, Supervising Attorney for Worker Justice: [rdeutsch@populardemocracy.org](mailto:rdeutsch@populardemocracy.org).*



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- <sup>i</sup> Renee Bailey, “Food Franchise Report 2017,” *Franchise Direct*, July 26, 2017, <https://www.franchisedirect.com/information/foodfranchisereport2017/>.
- <sup>ii</sup> “Franchising Overview,” *McDonald’s*, <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.
- <sup>iii</sup> “Franchising Overview,” *McDonald’s*, <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.
- <sup>iv</sup> “FAQs about Franchising,” *International Franchise Association*, <https://www.franchise.org/faqs-about-franchising>.
- <sup>v</sup> Franchise Disclosure Document (2013), <https://www.blumaumau.org/sites/default/files/MCD%202013%20FDD.pdf>.
- <sup>vi</sup> Testimony of Pacific Management Consulting Group (a restaurant analysis consultancy) Founder John. A. Gordon., page 3, *Ochoa v. McDonald’s Corp.* (June 19, 2015).
- <sup>vii</sup> Sean McElwee, “The Threat of Just – in – Time Scheduling,” *HuffPost*, Dec 6, 2017, [https://www.huffingtonpost.com/sean-mcelwee/the-threat-of-justintime- b\\_5682481.html](https://www.huffingtonpost.com/sean-mcelwee/the-threat-of-justintime- b_5682481.html).
- <sup>viii</sup> Daniel Wiessner, “McDonald’s to pay \$3.75 million in first settlement with franchise workers,” October 31, 2016, <https://www.reuters.com/article/us-mcdonalds-settlement-idUSKBN12V1NJ>.
- <sup>ix</sup> Ben Penn, “Sonic Works with Labor Agency to Keep Wage Violations Off the Menu,” *Bloomberg BNA*, July 27, 2017, <https://www.bna.com/sonic-works-labor-n73014462371/>; “U.S. Department of Labor, Sonic Sign Agreement to Promote Fair Labor Practices at Franchises Nationwide,” July 27, 2017, <https://www.dol.gov/newsroom/releases/whd/whd20170727>.
- <sup>x</sup> “NLRB Office of the General Counsel Authorizes Complaints Against McDonald’s Franchisees and Determines McDonald’s, USA, LLC is a Joint Employer,” *National Labor Relations Board*, July 29, 2014, <https://www.nlr.gov/news-outreach/news-story/nlr-office-general-counsel-authorizes-complaints-against-mcdonalds>.
- <sup>xi</sup> *McDonalds USA LLC, a Joint Employer, et al.*, 02-CA-093893 (NLRB Administrative Law Judge’s Order, July 17, 2018) <http://apps.nlr.gov/link/document.aspx/09031d458288067b>.
- <sup>xii</sup> Emeryville, CA, Mun. Code § 5-39.02 (2016).
- <sup>xiii</sup> Seattle, WA, Mun. Code § 14.22.020 (2016).
- <sup>xiv</sup> New York, NY, Admin. Code § 20-1201 (2017).
- <sup>xv</sup> ORS 653.422(1); Or. Legis. Assemb., S.B. 828 § 3(1), 79th Legis. Sess. (Or. 2017).
- <sup>xvi</sup> San Jose, CA, Mun. Code § 4.101.030 (2017).