

**CHAPTER 13.110
FAIR WORKWEEK EMPLOYMENT STANDARDS**

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13.110.000 Purpose and Intent

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

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.
- (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;
 - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section [1197](#) and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and
 - (3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.
- (f) “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.
- (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.
- (l) “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.
- (m) “Shift” shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.
- (n) “Work schedule” shall mean all of an employee’s shifts, including specific start and end times for each shift, during a calendar week.
- (o) “Building services” means the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services.
- (p) “Healthcare” shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.
- (q) “Hotel” shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

- (r) “Manufacturing” shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.
- (s) “Restaurant” shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.
- (t) “Retail” shall mean a Retail Products Store as defined in BMC Section 23F.04.10.
- (u) “Warehouse services” shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

13.110.020 Applicability

- (a) All sections of this chapter shall apply to: the City of Berkeley as an employer, and all employers in the City of Berkeley who are primarily engaged in any of the following industries:
 - (1) building services;
 - (2) healthcare;
 - (3) hotel;
 - (4) manufacturing;
 - (5) restaurant;
 - (6) retail; or
 - (7) warehouse services.
- (b) Notwithstanding subdivision (a), this chapter shall apply only to an employer that
 - (1) is not a restaurant and employs fifty (50) or more employees globally;
 - (2) is a restaurant operator employing ten (10) or more employees in the city of Berkeley and employs one hundred (100) or more globally; or
 - (3) is a franchisee employing ten (10) or more employees in the city of Berkeley and is associated with a network of franchises employing one hundred (100) or more employees globally.
- (c) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs one hundred (100) or more employees globally.
- (d) 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.
- (e) 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:

- (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.

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.

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: (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.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or

sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

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.

(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 arrangements among employees.
- (5) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification.

(6) To accommodate the following transitions in shifts:

(i) 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.

(ii) 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.

(7) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production.

(8) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(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.

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) who have worked on behalf of the employer for more than two weeks, and 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 schedule a part-time employee forty (40) hours of work in a calendar week. In order to facilitate communication with current employees who may be interested in additional work, an Employer may specify how employees may in advance communicate their interest of additional work and which positions and hours of work 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 or expression, 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 an increase in the number of

employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a the granting of any benefits that an employee earns based on hours worked.

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

(1) A part-time employee shall have twenty-four (24) hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The twenty-four (24) hour period referred to in this subsection begins 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 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 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.

13.110.100 Implementation.

- (a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. 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.
- (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.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, 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 or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled

only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) 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.

(k) 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.

(l) 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.

Dahl, Nathan

From: Dahl, Nathan
Sent: Wednesday, September 22, 2021 11:20 AM
To: Dahl, Nathan
Subject: FW: "Fair Work Week"

From: eduardo@sliverpizzeria.com <eduardo@sliverpizzeria.com>
Sent: Monday, September 20, 2021 1:34 PM
To: Dahl, Nathan <NDahl@cityofberkeley.info>
Subject: "Fair Work Week"

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

1. Are there any consequences to an employee calling out or a no call no show impacting other employees work schedules?
2. Most business operate with exact staff requirements it is common in restaurants for employees to call out, no call no show, or receive training for a few days than leave with no notice. All these actions by employees have an impact on scheduling. What tools is the City of Berkeley providing to business to deal with this?

Sept 22, 2021

To the Berkeley Labor Commission:

I'm writing to voice my concerns regarding the proposed Fair Work Week ordinance currently being considered by the commission. This ordinance would be **nothing short of disastrous** for restaurants for reasons I will discuss below, particularly during this unprecedented time.

The last 18 months have been incredibly challenging for restaurants. We have been forced to make countless operational adjustments in response to staffing shortages and various mandates from state and local governments and health departments. Everyone who has worked through this is hanging on by a thread both physically and emotionally - this recent [article](#) in the SF Chronicle sums it up.

So while I contend that the proposed ordinance is hugely problematic even in "normal" times, to be giving it active consideration now feels tone deaf to the realities local businesses are facing. On that note, I want to point out that the **City of Emeryville suspended their Fair Work Week ordinance indefinitely due to the pandemic**. And I'd like to remind the commission that the San Francisco Fair Work Week ordinance only applies to "**Formula Retail**".

COVID Guidelines = Daily Call-outs

As you know, the pandemic is far from over. We are heading into another winter with a highly infectious variant in play and a lot of unknowns. It is CDC-recommended protocol that anyone displaying symptoms of Covid or anyone who has been exposed to someone positive for Covid needs to stay out of the workplace until they are symptom free and can provide a negative test. Because the symptoms are so broad and staff are rightly cautious, we have anywhere from **1-4** employees call out sick with little to no notice **every day**. In order to maintain operations in a way that supports staff and provides a good experience for guests, we try to fill those vacated shifts. No staff member is required to do so, but they often pick them up voluntarily and appreciate being able to do so.

Labor Shortage/High Turnover

We are also operating during a huge labor shortage, not just locally but on a state and national level. This labor shortage has driven up compensation levels dramatically in recent months, and the many restaurants who are severely short-staffed are offering higher and higher wages to lure employees to their businesses. The result is very high employee turnover as employees jump from restaurant to restaurant chasing higher wages, often with no notice. When employees give us little to no notice, we need to backfill their vacated shifts. It's been very difficult to stabilize our workforce, even though we are paying all positions substantially more than we were pre-pandemic and facing labor costs that are unsustainable in light of our current business levels.

Last Minute Opportunities and Cancellations

Restaurants always experience last-minute reservation requests, many of them for large groups or private events, and they also experience their share of last-minute cancellations. The pandemic has exacerbated these patterns in each direction. We have had many large groups cancel with little to no notice due to fluctuating levels of discomfort about eating at restaurants, either indoors or in general. And when good opportunities are presented to us on short notice we are very motivated to capitalize on them given that we are still only at 60-65% of pre-pandemic business levels – that requires us to reach out to our staff and see if some of them want to work a particular event on short notice. Our employees appreciate these opportunities and are grateful for the extra work and the extra money that comes with that work.

Our Employees LIKE having flexible schedules!

I would encourage you to interview some of the restaurant employees whom this ordinance is meant to “protect”. What you would hear from them is that they appreciate having flexible schedules. They appreciate being able to swap shifts with a fellow employee so that they can go to dinner with a friend who comes to town unexpectedly or when they need to study for finals. They like being scheduled for two shifts and being able to pick up a couple more depending on how their week unfolds. They like being able to pick up a shift that is offered for a special event that is booked at the last minute.

Penalties for variation in schedule shift length?

Every full-service restaurant schedules employee shifts with the understanding that they will almost always vary depending on daily business levels. As business starts to tail off each night, some employees are “cut” so that staffing levels match the decreasing business levels. It is generally agreed upon at the beginning of each shift which server, bartender, etc will be cut first from their “department” as business slows. Someone is always happy to volunteer – in fact, we often have more than one volunteer. And if business levels are stronger than anticipated, our staff is more than happy to stay longer. **There is no way for us to schedule staff precisely given the highly unpredictable nature of our daily business levels.** But as stated above, our staff is very comfortable with the “in the moment” decisions each night.

It’s an Employee Market

Given the current labor shortage that is showing no signs of abating, particularly in the Bay Area due to the many challenges employees face trying to make a living here, it’s important to remember that employees have immense leverage. If they are unhappy with their current job situation, there are many other employers lining up to hire them. If we don’t meet our employees’ scheduling needs, we won’t hold onto them – it’s as simple as that. We are jumping through hoops to hold onto employees, including tailoring each person’s schedule to their unique circumstances.

Administrative Nightmare

On top of the reasons noted above, trying to comply with this complicated ordinance would be an administrative nightmare. In recent years, it has become increasingly challenging to keep up with the many new requirements, including the ACA, CalSavers, Berkeley Sick Leave, etc, not to

mention the evolving list of Covid compliance procedures. This ordinance would require a huge amount of additional admin time when we are already struggling to keep labor costs sustainable.

In conclusion, the proposed ordinance is a very blunt instrument that is not in tune with the operational realities that exist for restaurants, particularly full-service restaurants. If Berkeley is trying to position itself as a supportive environment for small, locally-owned businesses, this ordinance is sending the opposite message. If passed, it would greatly disincentivize any business considering setting up shop in Berkeley in the future, particularly anyone considering opening a restaurant in Berkeley. And in the case of restaurants, it will limit opportunities and decrease overall compensation for the very employees it is intended to protect.

Respectfully,

John Paluska
Owner – Comal/Comal Next Door

September 22, 2021

Commission on Labor
City of Berkeley
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704

RE: Fair Work Week Ordinance Considerations

It is with grave urgency that Berkeley Repertory Theatre and the undersigned arts and culture organizations urge the Committee on Labor to waive applicability (section 13.110.020) of the Fair Workweek Ordinance for theatrical non-profits doing business in the City of Berkeley. While we understand the gravity and importance of developing a standardization of work schedule notice to employees, the City of Berkeley is host to a variety of business types, not any of which experience the same set of workforce best practices.

Berkeley Repertory Theatre and theatrical organizations are nonprofit businesses which rely on a collaboration of creative artists, administrators, and technicians to cohesively create a shared product. The workflow of departments and responsibilities is dynamic and intertwined in a way that support one another's success and thereby the success of our productions.

Advance Notice of Work Schedules

All employees (exempt and non-exempt) in the theatre industry understand that the nature of our business will have a variable schedule during defined periods of production as well as different schedule expectations based on the department to which they were hired. During different phases of development, the needs of the next day's workflow may change day to day based on the developments of the previous day's work. That said, a schedule is developed (**section 13.110.40**) in good faith at the outset of the season or production with the understanding that the schedule may shift should an unexpected change occur. It bears noting that in the current draft of the Fair Workweek Ordinance there is no distinction between exempt and non-exempt employees which challenges the California Industrial Relations definition of exemption from overtime, meaning that a change in schedule for many creative and actor persons in our employ are in direct opposition to the terms of the Fair Workweek Ordinance.

Offer of Work to Existing Employees:

Our work is time sensitive, making adherence to draft **section 13.110.60** a challenge, which could derail not only our production's progress but can alter and degrade the high-quality production value our companies and our staffs have come to be known and celebrated for. The nature of our business is intrinsically embedded in the need for a flexible workforce. This responsibility is understood and accepted upon hire and is managed in good faith by supervisors. A waiting period of 24 hours to offer and accept work to another staff member not only puts workflow behind, but creates a bureaucratic business practice, which puts procedure ahead of effectiveness and moreover quality.

ADMINISTRATION

999 Harrison St • Berkeley, CA 94710
510 647-2900 • FAX 510 647-2975

BOX OFFICE

2025 Addison St • Berkeley, CA 94704
510 647-2949 • berkeleyrep.org

SCHOOL OF THEATRE

2071 Addison St • Berkeley CA 94704
510 647-2972 • berkeleyrep.org/school

Furthermore, it is important to note the devastating and unintended impact of including performing arts workers in California Assembly Bill AB5. Both arts workers and employers have endured significant increased financial and capacity impacts as a result, and adding on the challenges of the Fair Workweek Ordinance would be yet another reason arts institutions would be in the position of potentially having less work to offer and limiting the rehearsal process with financial constraints.

Finally, as a result of COVID-19 and the subsequent variants, arts and culture institutions are working feverishly to ensure the health and safety of our artists and our audiences alike. Not only has this been the direct result of extreme financial loss, our organizations are adding on regular testing in addition to proof of vaccination, which means that if anyone tests positive, we need to pause the rehearsal or performance calendar to keep everyone safe. Many of our organizations are already acting in good faith, and some by contract, to pay any artist with a 48 hour or shorter cancellation. This ordinance would further complicate and negatively impact our ability to get back to business after the longest pause in performing arts access our country has ever experienced.

With our greatest respect and appreciation, Berkeley Rep and the undersigned cultural institutions urge the commission to more narrowly define the Fair Workweek Ordinance to **not** include non-profit organizations and in particular theatre producing organizations in order to ensure a culturally vibrant and economically vital Berkeley community.

Sincerely:

Susie Medak, Managing Director, Berkeley Repertory Theatre

Liz Lisle, Shotgun Players

Sharon Dolan, Managing Director, Aurora Theatre

Jim Kleinmann, Artistic Director, PlayGround

Cherilyn Parsons, Founder & Executive Director, Bay Area Book Festival

Joyce Jenkins, Poetry Flash (review & event producer)

Joe Orrach, Joe Orrach Performance Project

Brendan Simon, TheatreFIRST

Cindy L. Myers, Small Press Distribution

Doris Fukawa, Crowden Music Center

Michael R Cohen, (President) and the board of directors, Actor's Ensemble of Berkeley

Nancy Ng, Executive Director, Creativity & Policy, Luna Dance Institute

Lisa Bullwinkel, Another Bullwinkel Show



October 18, 2021

City of Berkeley
Commission on Labor
Fair Work Week Subcommittee

Cc: Nathan Dahl Health, Housing & Community Services Department (510) 981-5405 E-mail:
Ndahl@cityofBerkeley.info

Re: Fair Work Week + Fast-food Workers

Dear Fair Workweek Committee Members,

My name is Julia Saravia and I work for a franchised McDonald's location on Shattuck.

I am calling to comment on the Fair Work Week Policy Recommendations.

It is important that *all* fast-food restaurants and fast-food workers be included in this ordinance. Fair work week protections would make a huge difference for us.

I am just one of 1,408 fast-food workers who work across 111 locations in our city.

Excluding fast-food workers from this ordinance is a direct attack on essential workers that served the Berkeley community before the pandemic, during the pandemic and who continue to serve your constituents today.

I can tell you first hand that we do not get fair scheduling in our stores.

Each week my schedule changes. I never know how many hours I will get, meaning I don't know if I will have enough in each paycheck to cover the expenses for my family.

For vocal workers like me who have spoken up, gone on strike and tried to improve conditions in our stores, managers use scheduling as leverage over us. After going on during a COVID outbreak at my location, my managers made unpredictable changes to my schedule. Sometimes I'd get last minute notice to come in early, other times my hours would be cut in half.

This isn't fair and this happens at fast-food locations across the city and our state.

When *you* walk into a McDonald's location, you probably can't tell whether it's a franchise or corporate operated store. The layouts are similar, the food tastes the same, and no matter what kind of store you enter, you will find workers struggling to get by.

Like any worker, we should have predictability, stability, and an opportunity to do the work that the company needs done. Please recommend this strong ordinance, and make sure to include franchisees. Whether we work at a fast food chain that's corporately owned or a franchise we need these same things.

Respectfully,
Julia Saravia
Fight for \$15
Berkeley McDonald's Worker

Dahl, Nathan

From: Adriana Cortes Luna <adricortesluna00@gmail.com>
Sent: Monday, October 18, 2021 7:21 PM
To: Dahl, Nathan
Subject: Edith Aburto- Including Fast Food workers- City of Berkeley

Follow Up Flag: Flag for follow up
Flag Status: Flagged

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Good evening Nathan,

Below are the remarks:

Thank you,
Adriana Cortes Luna

Hello, my name is Edith Aburto. I am a Berkeley McDonald's worker and leader in the Fight for \$15 and a Union.

I call to urge the committee to include fast food franchise workers in this ordinance.

My store is at 1998 Shattuck ave in Berkeley.

They never respect our schedules, they are always changing our days off and also the work schedule. I cannot count on a day to make plans with my family because of the constant changes to my schedule.

When we have to ask for permission they need us to notify them 15 days in advance but when we need a day off or we have an emergency they become bothered if we request a day off.

With the pandemic they reduced my hours to less than half of my hours and those hours were not returned to me, I almost had to go to the extremes of begging them to give me more hours because I really needed work, especially because my family tested positive for covid 19 and I really needed hours to work.

Because my hours were cut, I had to apply for rental assistance because I already owed four months of rent.

I am not alone. There are more than 1,408 fast food workers working at 111 fast food locations in Berkeley.

Fast food workers are critical. We must be treated as essential and we must be included in this ordinance.

Committee members, you have a choice. Are you siding with frontline workers like me or wealthy fast food CEOs who will only benefit from being excluded from this ordinance?

Thanks.

Edith Aburto