

Kate Harrison
Vice Mayor, District 4

REVISED AGENDA MATERIAL

Meeting Date: November 14, 2022

Item Number: TBD

Item Description: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

Submitted by: Vice Mayor Harrison and Mayor Arreguín

RECOMMENDATION:

1. Submitting version of ordinance suggested by Mayor Arreguín/Harrison on November 3, 2022 with two additional edits made in consultation with City Attorney to:

1. update Zoning Code references in definition sections;
2. clarify in Section 13.102.030(d) that the ordinance will become effective for eligible employees not subject to a collective bargaining agreement one year from passage.

2. Refer to the AAO #1 Budget Process \$104,863 in General Funds with additional benefits to hire a Community Development Project Coordinator in the Health, Housing and Community Services (HHCS) Department to assist with enforcement of the Fair Workweek Ordinance, and existing/prospective labor laws and regulations, and \$69,000 for a half-time payroll clerk for potential enrollment in benefits programs.

ATTACHMENTS:

1. Ordinance adding Chapter 13.102 (clean version)
2. Ordinance adding Chapter 13.102 comparing to Vice Mayor Harrison's November 3, 2022 Supplemental #2 (track changes version)

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.102 is added to read as follows:

CHAPTER 13.102

FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

- 13.102.010 Purpose and Intent**
- 13.102.020 Definitions.**
- 13.102.030 Applicability.**
- 13.102.040 Waiver through Collective Bargaining**
- 13.102.050 Advance Notice of Work Schedules.**
- 13.102.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.102.070 Offer of Work to Existing Employees.**
- 13.102.080 Right to Rest.**
- 13.102.090 Right to Request a Flexible Working Arrangement.**
- 13.102.100 Notice and Posting.**
- 13.102.110 Implementation.**
- 13.102.120 Enforcement.**
- 13.102.130 Retaliation Prohibited**
- 13.102.140 Retention of Records.**
- 13.102.150 City Access.**
- 13.102.160 No Preemption of Higher Standards.**
- 13.102.170 Severability.**

13.102.010 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.

13.102.020 Definitions

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

- (a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- (c) "City" shall mean the City of Berkeley.
- (d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section 13.102.030.
- (e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) "Employee" shall mean any person who:
 - (1) In a calendar week performs at least two hours of work within the geographic boundaries of the City of Berkeley for a covered 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.
- (g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, 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.
- (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) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23.502.020, or a facility that provides outpatient maintenance dialysis.
- (m) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23.502.020.
- (n) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23.502.020.

- (o) "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 13.102.060, in addition to any wages earned for work performed by that employee.
- (p) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23.502.020.
- (q) "Retail" shall mean a Retail Products Store as defined in BMC Section 23.502.020.
- (r) "Shift" shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.
- (s) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23.502.020.
- (t) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.
- (u) "Writing" or "written" means a printed or printable communication in physical or electronic format including a communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.

13.102.030 Applicability

- (a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley with 10 or more employees in the City of Berkeley that is:
 - (1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or
 - (2) primarily engaged in the restaurant industry, and employs 100 or more employees globally; or
 - (3) a franchisee primarily engaged in the retail or restaurant industries and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally; or
 - (4) a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code in the industries specified under subsection (a)(1), (2), and (3) and employs 100 or more employees globally.
- (b) 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.
- (c) 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. Within one year of the effective date of the

ordinance, the City Manager shall promulgate rules pursuant to the authority provided in Section 13.102.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise.

(d) This chapter shall become operative with respect to employees not subject to a collective bargaining agreement, including employees working for the City of Berkeley and all other employers, one year after the effective date of the ordinance. Unless waived pursuant to Section 13.102.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide second or successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

13.102.040 Waiver through Collective Bargaining

Except for existing collective bargaining agreements in effect prior to the effective date of this ordinance, as provided for in Section 13.102.030(d), the requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

13.102.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one 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.

(c) An Employee who is a victim of domestic violence or sexual violence as defined in Sections 6211 or 6203 and encompassing the acts described in Section 6320 of the California Family Code 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.

13.102.060 Schedule Changes.

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) 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 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) 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 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours notice to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

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

(1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;

(2) 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; or

(3) To accommodate the following transitions in shifts:

(i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, 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.

(e) Operational 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), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;
- (4) 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; or
- (5) 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 is reasonably expected to 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 healthcare employer's control.

(f) 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.

13.102.070 Offer of Work to Existing Employees.

(a) Subject to the limitations in this chapter, before hiring new 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, if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer, and if the additional hours needed are not the same hours the part-time employee is scheduled to work. This section shall not be construed to require

any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours.

(b) A covered employer has discretion to distribute the additional work hours among qualified 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; 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 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) Part-time employees shall have 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 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 or electronically where notices to employees are customarily posted.

13.102.080 Right to Rest.

(a) An employee has the right to decline work hours that occur less than 11 hours after the end of the previous shift.

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

13.102.090 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. Notwithstanding any obligations under Section 13.102.060, an employer may accept, modify, or decline the employee's request. 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.

13.102.100 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. 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. The written 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. 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.

13.102.110 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.

13.102.120 Enforcement.

(a) Enforcement by City. 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 \$1,000 for each employee retaliated against.
- (2) A fine of \$500 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 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.

(b) 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.

(c) 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 with a maximum penalty of \$1,000 per Employee per year, reinstatement in employment and/or injunctive relief.

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.

(d) 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 \$50 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 \$50 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.

(e) 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.

(f) 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.

13.102.130 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 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.

13.102.140 Retention of Records.

Each employer shall maintain for at least three 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.

13.102.150 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.

13.102.160 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.

13.102.170 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.102 is added to read as follows:

CHAPTER 13.102

FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

- 13.102.010 Purpose and Intent**
- 13.102.020 Definitions.**
- 13.102.030 Applicability.**
- 13.102.040 Waiver through Collective Bargaining**
- 13.102.050 Advance Notice of Work Schedules.**
- 13.102.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.102.070 Offer of Work to Existing Employees.**
- 13.102.080 Right to Rest.**
- 13.102.090 Right to Request a Flexible Working Arrangement.**
- 13.102.100 Notice and Posting.**
- 13.102.110 Implementation.**
- 13.102.120 Enforcement.**
- 13.102.130 Retaliation Prohibited**
- 13.102.140 Retention of Records.**
- 13.102.150 City Access.**
- 13.102.160 No Preemption of Higher Standards.**
- 13.102.170 Severability.**

13.102.010 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.

13.102.020 Definitions

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

- (a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- (c) "City" shall mean the City of Berkeley.
- (d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section 13.102.030.
- (e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) "Employee" shall mean any person who:
 - (1) In a calendar week performs at least two hours of work within the geographic boundaries of the City of Berkeley for ~~an~~ covered 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.
- (g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, ~~r~~ 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.
- (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) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section ~~23F.04.1023.502.020~~, or a facility that provides outpatient maintenance dialysis.
- (m) "Hotel" shall mean Tourist Hotel as defined in BMC Section ~~23F.04.1023.502.020~~.
- (n) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section ~~23F.04.1023.502.020~~.

(o) "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 13.102.060, in addition to any wages earned for work performed by that employee.

(p) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section ~~23F.04.1023.502.020~~.

(q) "Retail" shall mean a Retail Products Store as defined in BMC Section ~~23F.04.1023.502.020~~.

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

(s) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section ~~23F.04.1023.502.020~~.

(t) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.

(u) "Writing" or "written" means a printed or printable communication in physical or electronic format including a communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.

13.102.030 Applicability

(a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley with 10 or more employees in the City of Berkeley that is:

(1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or

(2) primarily engaged in the restaurant industry, and employs 100 or more employees globally; or

(3) a franchisee primarily engaged in the retail or restaurant industries and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally; ~~or~~

(4) a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code in the industries specified under subsection (a)(1), (2), and (3) ~~above~~ and employs 100 or more employees globally.

(b) 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.

(c) 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. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in Section 13.102.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise.

(d) ~~For the City of Berkeley as an employer, this~~ This chapter shall become operative with respect to ~~non-represented~~ employees not subject to a collective bargaining agreement, including employees working for the City of Berkeley and all other employers, one year after the effective date of the ordinance. Subject Unless waived pursuant to a waiver under Section 13.102.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide second or successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

13.102.040 Waiver through Collective Bargaining~~(e) For all other employers, with respect to employees subject to a~~
Except for existing collective bargaining agreement, agreements in effect prior to the effective date of this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to ordinance, as provided for in Section 13.102.040.

~~(f) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after~~30(d), the ~~effective date of the ordinance.~~

~~13.102.040 Waiver through Collective Bargaining~~

~~The~~ requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

13.102.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one 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.

(c) An Employee who is a victim of domestic violence or sexual violence as defined in Sections 6211 or 6203 and encompassing the acts described in Section 6320 of the California Family Code 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.

13.102.060 Schedule Changes.

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) 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 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) 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 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours notice to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

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

- (1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;
- (2) 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; or
- (3) To accommodate the following transitions in shifts:
 - (i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, 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.

(e) Operational 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), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;
- (4) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for ~~Covered Employees~~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; or
- (5) 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 willis reasonably expected to 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'shealthcare employer's control.

(f) 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.

13.102.070 Offer of Work to Existing Employees.

(a) Subject to the limitations in this chapter, before hiring new 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, if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer, and if the additional hours needed are not the same hours the part-time employee is scheduled to work. This section shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours.

(b) A covered employer has discretion to distribute the additional work hours among qualified 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; 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 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~~Part-time employees shall have 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 24~~The 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 or electronically where notices to employees are customarily posted.

13.102.080 Right to Rest.

(a) An employee has the right to decline work hours that occur less than 11 hours after the end of the previous shift.

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

13.102.090 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. Notwithstanding any obligations under Section 13.102.060, an employer may accept, modify, or decline the employee's request. 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.

13.102.100 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. 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. ~~The The written~~ 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.

13.102.110 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.

13.102.120 Enforcement.

(a) Enforcement by City. 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 \$1,000 for each employee retaliated against.

(2) A fine of \$500 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 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.

(b) 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.

(c) 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 with a maximum penalty of \$1,000 per Employee per year, reinstatement in employment and/or injunctive relief.

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.

(d) 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 \$50 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 \$50 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.

(e) 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.

(f) 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.

13.102.130 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 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.

13.102.140 Retention of Records.

Each employer shall maintain for at least three 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.

13.102.150 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.

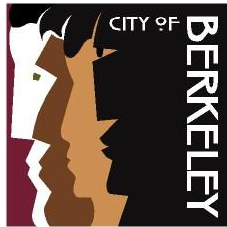
13.102.160 No Preemption of Higher Standards.

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.

13.102.170 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Kate Harrison
Vice Mayor, District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 3, 2022

Item Number: 35

Item Description: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

Submitted by: Vice Mayor Harrison

RECOMMENDATION:

1. Adopt the revised Fair Workweek ordinance amended in consultation with the City Attorney's office to:
 - a. apply consistent employee thresholds of 10 workers employed within Berkeley and to clarify that the covered non-profits include only those in industries specified under Section 13.102.030 (a)(1), (2) and (3);
 - b. clarify definitions of domestic violence and sexual violence for purposes of work schedules not being posted publicly;
 - c. simplify 'Right to Rest' provisions;
 - d. simplify 'Enforcement by City' provisions;
 - e. clarify provisions relating to third-party enforcement of applicable state labor laws; and
 - f. fix formatting and numbering errors throughout.
2. Refer to the AAO #1 Budget Process \$104,863 in General Funds with additional benefits to hire a Community Development Project Coordinator in the Health, Housing and Community Services (HHCS) Department to assist with enforcement of the Fair Workweek Ordinance, and existing/prospective labor laws and regulations, and \$69,000 for a half-time payroll clerk for potential enrollment in benefits programs.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The HHCS department is responsible for staffing and enforcing each of the City's labor ordinances and regulations, including the Minimum Wage, Paid Sick Leave, Berkeley Family Friendly and Environment Friendly, and Living Wage Ordinances. Currently, the Department has a single employee tasked with enforcing Berkeley's workforce standards. In consultation with HHCS leadership and a former employee who staffed the division, current labor enforcement staffing levels may not adequate

for existing programs, let alone the adoption of possible new legislation such as the Fair Work Week Ordinance. It is in the public interest to expand staffing in this division to enhance implementation and enforcement of Berkeley's workforce standards. This budget referral was previously submitted by Vice Mayor Harrison as part of the FY 2022-23 budget process (see attached).

The Human Resources Department and Auditor's Office play a role in enrolling employees in retirement and health benefits, respectively. To the extent that any of the City's part time low-wage employees are qualified for additional hours within their existing function, and that additional hours of work are needed and budgeted and requests for those hours are made by existing employees, they may qualify for enrollment in retirement and health benefits once a given number of hours are reached. These are primarily management decisions about allocation of resources.

ATTACHMENTS

1. Revised Ordinance
2. Unfunded Community Development Project Coordinator Budget Referral

FISCAL IMPACTS OF RECOMMENDATION

Impact on General Fund of up to \$104,863 and \$69,000 per year.

ENVIRONMENTAL SUSTAINABILITY

No discernable impact.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.102 is added to read as follows:

CHAPTER 13.102

FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

- 13.102.010 Purpose and Intent**
- 13.102.020 Definitions.**
- 13.102.030 Applicability.**
- 13.102.040 Waiver through Collective Bargaining**
- 13.102.050 Advance Notice of Work Schedules.**
- 13.102.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.102.070 Offer of Work to Existing Employees.**
- 13.102.080 Right to Rest.**
- 13.102.090 Right to Request a Flexible Working Arrangement.**
- 13.102.100 Notice and Posting.**
- 13.102.110 Implementation.**
- 13.102.120 Enforcement.**
- 13.102.130 Retaliation Prohibited**
- 13.102.140 Retention of Records.**
- 13.102.150 City Access.**
- 13.102.160 No Preemption of Higher Standards.**
- 13.102.170 Severability.**

13.102.010 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.

13.102.020 Definitions

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

- (a) “Building services” means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) “Calendar week” shall mean a period of seven consecutive days starting on Sunday.
- (c) “City” shall mean the City of Berkeley.
- (d) “Covered employer” shall mean an employer subject to the provisions of this chapter, as specified in Section 13.102.030.
- (e) “Department” shall mean the City Manager’s Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) “Employee” shall mean any person who:
 - (1) In a calendar week performs at least two 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.
- (g) “Employer” shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , 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.
- (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) “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.
- (m) “Hotel” shall mean Tourist Hotel as defined in BMC Section 23F.04.10.
- (n) “Manufacturing” shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(o) "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 13.102.060, in addition to any wages earned for work performed by that employee.

(p) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(q) "Retail" shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

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

(s) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

(t) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.

13.102.030 Applicability

(a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley with 10 or more employees in the City of Berkeley that is:

(1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or

(2) primarily engaged in the restaurant industry, and employs ~~10 or more employees in the city of Berkeley and employs~~ 100 or more employees globally; or

(3) ~~is a franchisee~~ primarily engaged in the retail or restaurant industries ~~employing 10 or more employees in the city of Berkeley~~ and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.

(4) ~~This chapter does not apply to~~ a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code in the industries specified under subsection (a)(1), and (2), and (3) above employs 100 or more employees globally.

(b) 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.

(c) 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. Within one year of the effective date of the

ordinance, the City Manager shall promulgate rules pursuant to the authority provided in Section 13.102.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise.

(d) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section 13.102.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(e) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section 13.102.040.

(f) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

13.102.040 Waiver through Collective Bargaining

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

13.102.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one 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.

(c) An Employee who is a victim of domestic violence or sexual violence as defined in Sections 6211 or 6203 and encompassing the acts described in Section 6320 of the California Family Code 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.

13.102.060 Schedule Changes.

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) 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 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) 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 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

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

(1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;

(2) 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; or

(3) To accommodate the following transitions in shifts:

(i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, 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.

(e) Operational 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), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;

(4) 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; or

(5) 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.

(f) 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.

13.102.070 Offer of Work to Existing Employees.

(a) Subject to the limitations in this chapter, before hiring new 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, 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 shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours.

(b) A covered employer has discretion to distribute 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; 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 ~~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 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 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 or electronically where notices to employees are customarily posted.

13.102.080 Right to Rest.

(a) An employee has the right to decline work hours that occur 1:

~~(1) Less than 11 hours after the end of the previous day's shift; or~~

~~(2) During the 11 hours following the end of a shift that spanned two days.~~

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

13.102.090 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. Notwithstanding any obligations under Section 13.102.060, an

employer may accept, modify, or decline the employee's request. 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.

13.102.100 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.

13.102.110 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.

13.102.120 Enforcement.

(a) Enforcement by City. ~~Where prompt compliance with the provisions of this chapter is not forthcoming, the~~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 \$1,000 for each employee retaliated against.

(2) A fine of \$500 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 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.

(b) 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.

(c) 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 with a maximum penalty of \$1,000 per Employee per year, 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.~~

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.

(d) 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 \$50 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 \$50 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.

(e) 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.

(f) 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.

13.102.130 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 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.

13.102.140 Retention of Records.

Each employer shall maintain for at least three 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.

13.102.150 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.

13.102.160 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.

13.102.170 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Kate Harrison
Vice Mayor, District 4

CONSENT CALENDAR
May 31, 2022

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Harrison
Subject: Budget Referral: Fund Additional HHCS Community Development Project Coordinator Position to Assist with Workforce Standards and Enforcement

RECOMMENDATION

Refer to the FY 23 and FY 24 Annual Budget Process approximately \$104,863 in General Funds with additional benefits to hire another Community Development Project Coordinator in the Health, Housing and Community Services (HHCS) Department to assist with enforcement of existing and prospective labor laws and regulations.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The HHCS department is responsible for staffing and enforcing each of the City's labor ordinances and regulations, including the Minimum Wage, Paid Sick Leave, Berkeley Family Friendly and Environment Friendly, and Living Wage Ordinances. Currently, the Department has a single employee tasked with enforcing Berkeley's workforce standards. In consultation with HHCS leadership and a former employee who staffed the division, current labor enforcement staffing levels may not adequate for existing programs, let alone the adoption of possible new legislation such as the Fair Work Week Ordinance. It is in the public interest to expand staffing in this division to enhance implementation and enforcement of Berkeley's workforce standards.

BACKGROUND:

The City of Berkeley currently enforces four workforce standards ordinances with the following provisions:

Minimum Wage

Employers must pay all staff who work in Berkeley at least two hours per week the minimum wage standard set by the City. The minimum wage standard in Berkeley is listed below:

The minimum wage standard applies to all employees who work at least two hours in the geographical limits of Berkeley, regardless of where the employer is located or where the employee lives. The standard applies to both for-profit and

non-profit employers. Employees' tips do not count towards covering the minimum wage payment.

Paid Sick Leave

Employers must give their staff one hour of paid sick leave for every 30 hours worked.

Small business employers (with fewer than 25 employees) may cap an employee's accrued paid sick leave at 48 hours and may cap the use of paid sick leave to 48 hours per year.

Employers with 25 or more employees may cap an employee's accrual of paid sick leave at 72 hours, but may not cap how much paid sick leave an employee uses in a calendar year.

Berkeley Family Friendly and Environment Friendly Ordinance

Under this ordinance, an employee has the right to request a flexible or predictable work schedule. The employer does not have to grant the request, but does have to respond in writing within 21 days. If denying the request, the written response must include a business reason for denial.

The ordinance applies to employers with ten or more employees. Employees must have worked at least three months and must work at least eight hours per week on a regular basis to be covered by the ordinance.

An employer may revoke or modify a flexible or predictable working schedule for business reasons, with reasonable notice to the employee. Within 21 days, the employer must provide a schedule and must provide in writing to the employee a business reason for the change.

Living Wage Ordinance

Vendors paid more than \$25,000 per year by the City of Berkeley must comply with the Living Wage Ordinance. To comply, vendors must pay a living wage (set by the City), provide health benefits or cash in lieu, and provide paid time off.

HHCS is responsible for implementing and enforcing such ordinances, including collecting complaints and helping to adjudicate alleged violations. Complaints are currently collected via email, in person or by mail. Complaints may be submitted by employees or any other person. In addition, HHCS is responsible for enforcing against employers who retaliate against any employee who asserts their right under the ordinances. Such responsibilities are vast and require additional staffing.

In addition, Council is actively considering the Fair Work Week Ordinance, which could require HHCS to adopt significant additional implementation and enforcement responsibilities.

FISCAL IMPACTS OF RECOMMENDATION

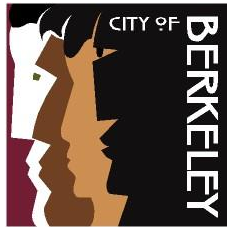
Impact on General Fund of \$104,863.

ENVIRONMENTAL SUSTAINABILITY

No discernable impact.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140



Susan Wengraf
Councilmember District 6

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: November 3, 2022

Item Number: 35

Item Description: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

Supplemental/Revision Submitted By: Councilmember Wengraf

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

This Comparison Chart of the Fair Workweek Ordinances of Emeryville, San Francisco, San Jose, Chicago and Berkeley’s proposed should help facilitate informed decision making.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Fair Workweek Ordinance Comparison Table

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Title & effective date	Fair Workweek Employment Standards	Fair Workweek Employment Standards July 1, 2017	Formula Retail Employee Rights July 3, 2015	Opportunity to Work March 13, 2017	Chicago Fair Workweek April 1, 2020
Sectors applies to	(1) building services; (2) healthcare; (3) hotel; (4) manufacturing; (5) restaurant; (6) retail; (7) warehouse services; (8) Nonprofits; (9) City of Berkeley	(1) Retail Firms (2) Fast Food Firms	(1) Formula Retail Establishments, including their Janitorial and Security Contractors = Chain retail including: amusement arcades, cannabis retail, general grocery, gyms, movie theaters, pharmacies, bars, limited restaurants, some financial services	Private and Nonprofit Employers. Does not apply to Government Employers.	Except for City employees, same sectors as Berkeley. Employees with pay greater than current 40 th percentile of Midwest Census Region as determined by US Dept of Labor, not included.
# of employees applies to	Employs 10 or more in Berkeley and : <u>Restaurants</u> : 100 or more globally <u>All other sectors</u> : 56 or more employees globally <u>Franchisee</u> : 100 or more globally <u>Nonprofits</u> : 100 or more globally	<u>Retail Firms</u> : 56 or more employees globally. <u>Fast Food Firms</u> : 56 employees or more globally and 20 or more employees within Emeryville.	<u>Chain Retail</u> : with 11 or more establishments. Number of employees irrelevant.	<u>Employers subject to the San Jose Business License Tax</u> : 36 or more employees. Includes total # of employees in a chain not owned by a franchisee, or total # working under same franchisee.	<u>Restaurants</u> : At least 30 locations globally and 250 employees. <u>All other sectors</u> : # of employees irrelevant.

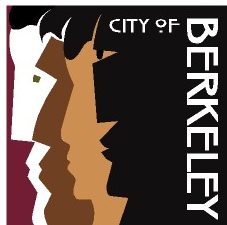
TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Waiver through Collective Bargaining	Yes	Yes	Yes	Yes	Yes
Schedule advance notice	2-weeks	2-weeks	2-weeks	N/A – Ordinance only mandates offer of additional hours	14 days
The right to to decline additional hours	Yes	Yes	Right to request modification of proposed schedule.	Yes	Yes
Right to “predictability pay”	Yes	Yes	Yes	N/A – Ordinance only mandates offer of additional hours	Yes
Offer of Work to Existing Employees	Yes	Yes	Yes	Yes	Yes
Right to Rest: The right to refuse “clopening” shifts	Yes Clopening = <u>Less than 11</u> hours after the end of the previous shift. <i>Compensation = time and a half</i>	Yes Same as Berkeley	Not included	N/A – Ordinance only mandates offer of additional hours	Yes <u>Less than 10</u> hours after the end of the previous day’s shift. <i>Compensation = time and a half</i>
Right to request a flexible work arrangement	Yes	Yes	Not included	N/A – Ordinance only mandates offer of additional hours	Yes

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Notice & Posting	Yes: City shall make notices in English and other languages available for employers Employers must notify each employee in writing and post prominently at worksite.	Yes: Same as Berkeley	Yes: Similar to Berkeley but notices translated into all languages spoken by more than 5% of the San Francisco working population.	Yes: Similar to Berkeley but translated into 4 languages: English, Spanish, Vietnamese and Cantonese.	Yes: Similar to Berkeley
Implementation	City coordinates implementation	City coordinates implementation	City coordinates implementation	City coordinates implementation	City coordinates implementation
Enforcement	City Manager's Department implements and enforces the program and holds authority to issue Administrative Citations and Fines. Private right of action for employees and members of the public.	City of Emeryville implements and enforces the program and holds authority to issue Administrative Citations & Fines. Private right of action for employees only (not members of the public).	Office of Labor Standards Enforcement oversees program and complaints. On-line form for employee to complete and turn in. The Office issues Administrative Citations and Fines.	The City's Office of Equality Assurance is responsible for implementation and enforcement of the Opportunity to Work Ordinance	Department of Business Affairs and Consumer Protection implements the program and holds authority to investigate and issue Administrative Citations & Fines.
Retaliation Prohibited	Yes	Yes	Yes	Yes	Yes
Retention of Records	Employers must maintain 3 years of records for each employee	Same as Berkeley	Same as Berkeley	Employers must maintain records no less than 4 years	Same as Berkeley
City Access	Employers shall permit access to work sites and relevant records for complaint investigation; compliance monitoring	Same as Berkeley	Same as Berkeley	Not included	Same as Berkeley

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Implementation Timing	Not included	Soft launch July 1 – Dec 31, 2017. Full enforcement began Jan 1, 2018 NOTE: Due to COVID-19, employers are not required to provide premium pay for schedule changes if business operations “cannot begin or continue” during the period of the State and County emergency orders.	180 days after effective date	Approved by voters in Nov 2016 election. Effective date March 13, 2017.	July 1, 2020 (after May 2019 approval)
Renewal Business Tax Certificate	Not included	Covered businesses must provide written statement with total number of employees at each location in Emeryville and worldwide, before tax certificate expires.	Not included	Not included	Not included

Sources: [Berkeley](#); [Emeryville Ordinance](#); [Emeryville Regulations](#); [San Francisco](#); [Chicago](#); [Fair Workweek overview](#); [Economic Policy Institute 2018 Review](#)

11/3/2022



Kate Harrison
Vice Mayor, District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: October 11, 2022

Item Number: 22a

Item Description: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

Submitted by: Vice Mayor Harrison

Revised ordinance chapter from 13.110 to 13.102. Chapter 13.110 is already taken by the COVID-19 Emergency Response Ordinance.

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter ~~13.110~~13.102 is added to read as follows:

CHAPTER ~~13.110~~13.102
FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

- ~~13.110~~13.10 Purpose and Intent
- 2.010
- ~~13.110~~13.10 Definitions.
- 2.020
- ~~13.110~~13.10 Applicability.
- 2.030
- ~~13.110~~13.10 Waiver through Collective Bargaining
- 2.040
- ~~13.110~~13.10 Advance Notice of Work Schedules.
- 2.050
- ~~13.110~~13.10 Notice, Right to Decline, and Compensation for Schedule Changes.
- 2.060
- ~~13.110~~13.10 Offer of Work to Existing Employees.
- 2.070
- ~~13.110~~13.10 Right to Rest.
- 2.080
- ~~13.110~~13.10 Right to Request a Flexible Working Arrangement.
- 2.090
- ~~13.110~~13.10 Notice and Posting.
- 2.100
- ~~13.110~~13.10 Implementation.
- 2.110
- ~~13.110~~13.10 Enforcement.
- 2.120
- ~~13.110~~13.10 Retaliation Prohibited
- 2.130
- ~~13.110~~13.10 Retention of Records.
- 2.140
- ~~13.110~~13.10 City Access.
- 2.150
- ~~13.110~~13.10 No Preemption of Higher Standards.
- 2.160
- ~~13.110~~13.10 Severability.
- 2.170

~~13.110~~13.102.010 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.

13.11013.102.020 Definitions

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

- (a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- (c) "City" shall mean the City of Berkeley.
- (d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section [13.11013.102.030](#).
- (e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) "Employee" shall mean any person who:
 - (1) In a calendar week performs at least two 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.
- (g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , 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.
- (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) "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.

(m) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(n) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(o) "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~~13.102.060, in addition to any wages earned for work performed by that employee.

(p) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(q) "Retail" shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

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

(s) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

(t) "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~~13.102.030 Applicability

(a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley that is:

- (1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or
- (2) primarily engaged in the restaurant industry, and employs 10 or more employees in the city of Berkeley and employs 100 or more globally; or
- (3) is a franchisee primarily engaged in the retail or restaurant industries employing 10 or more employees in the city of Berkeley and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.

(b) 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 100 or more employees globally.

(c) In determining the number of employees performing work for an 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.

(d) 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. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in

Section ~~13.110~~13.102.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise. .

(e) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section ~~13.110~~13.102.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(f) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section ~~13.110~~13.102.040.

(g) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

~~13.110~~13.102.040 Waiver through Collective Bargaining

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

~~13.110~~13.102.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one 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.

(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.

13.11013.102.060 Schedule Changes.

- (a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.
- (b) Right to Decline. Subject to the exceptions in subsections (d) and (e) 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 14 days before the first day of any new schedule.
- (c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) 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 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;
 - (2) with less than 24 hours to the employee,
 - (i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;
 - (ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.
- (c) Scheduling Exceptions. The requirements of this section shall not apply under any of the following circumstances:
- (1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;
 - (2) 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; or
 - (3) To accommodate the following transitions in shifts:

- (i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, 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.
- (d) Operational 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), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;
 - (4) 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; or
 - (5) 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.

- (a) Subject to the limitations in this chapter, before hiring new 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, 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 shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours. .
- (b) A covered employer has discretion to distribute 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; 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 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 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 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 or electronically where notices to employees are customarily posted.

13.11013.102.080 Right to Rest.

- (a) An employee has the right to decline work hours that occur:
- (1) Less than 11 hours after the end of the previous day's shift; or
- (2) During the 11 hours following the end of a shift that spanned two days.
- (b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half times the employee's regular rate of pay for any hours worked less than 11 hours following the end of a previous shift.

13.11013.102.090 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. Notwithstanding any obligations under Section ~~13.110~~13.102.060, an employer may accept, modify, or decline the employee's request. 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~~13.102.100 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~~13.102.110 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~~13.102.120 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 \$1,000 for each employee retaliated against.
- (2) A fine of \$500 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 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 \$50 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 \$50 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.

13.11013.102.130 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 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.

13.11013.102.140 Retention of Records.

Each employer shall maintain for at least three 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.

13.11013.102.150 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.

13.11013.102.160 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.

13.11013.102.170 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

DRAFT

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

**CHAPTER 13.110
FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

- 13.110.010 Purpose and Intent**
- 13.110.020 Definitions.**
- 13.110.030 Applicability.**
- 13.110.040 Waiver through Collective Bargaining**
- 13.110.050 Advance Notice of Work Schedules.**
- 13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.110.070 Offer of Work to Existing Employees.**
- 13.110.080 Right to Rest.**
- 13.110.090 Right to Request a Flexible Working Arrangement.**
- 13.110.100 Notice and Posting.**
- 13.110.110 Implementation.**
- 13.110.120 Enforcement.**
- 13.110.130 Retaliation Prohibited**
- 13.110.140 Retention of Records.**
- 13.110.150 City Access.**
- 13.110.160 No Preemption of Higher Standards.**
- 13.110.170 Severability.**

13.110.010 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.

13.110.020 Definitions

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

- (a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- (c) "City" shall mean the City of Berkeley.
- (d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.030.
- (e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) "Employee" shall mean any person who:
 - (1) In a calendar week performs at least two 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.
- (g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , 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.
- (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) "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.
- (m) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23F.04.10.
- (n) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

- (o) “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 13.110.060, in addition to any wages earned for work performed by that employee.
- (p) “Restaurant” shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.
- (q) “Retail” shall mean a Retail Products Store as defined in BMC Section 23F.04.10.
- (r) “Shift” shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.
- (s) “Warehouse services” shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.
- (t) “Work schedule” shall mean all of an employee’s shifts, including specific start and end times for each shift, during a calendar week.

13.110.030 Applicability

- (a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley that is:
- (1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or
 - (2) primarily engaged in the restaurant industry, and employs 10 or more employees in the city of Berkeley and employs 100 or more globally; or
 - (3) is a franchisee primarily engaged in the retail or restaurant industries employing 10 or more employees in the city of Berkeley and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.
- (b) 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 100 or more employees globally.
- (c) In determining the number of employees performing work for an 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.
- (d) 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. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in

Section 13.110.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise. .

(e) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section 13.110.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(f) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section 13.110.040.

(g) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

13.110.040 Waiver through Collective Bargaining

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

13.110.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one 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.

(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.

13.110.060 Schedule Changes.

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) 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 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) 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 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

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

(1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;

(2) 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; or

(3) To accommodate the following transitions in shifts:

- (i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, 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.
- (d) Operational 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), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;
 - (4) 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; or
 - (5) 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.

13.110.070 Offer of Work to Existing Employees.

(a) Subject to the limitations in this chapter, before hiring new 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, 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 shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours. .

(b) A covered employer has discretion to distribute 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; 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 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 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 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 or electronically where notices to employees are customarily posted.

13.110.080 Right to Rest.

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

(1) Less than 11 hours after the end of the previous day's shift; or

(2) During the 11 hours following the end of a shift that spanned two days.

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

13.110.090 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. Notwithstanding any obligations under Section 13.110.060, an employer may accept, modify, or decline the employee's request. 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.

13.110.100 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 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 \$1,000 for each employee retaliated against.

(2) A fine of \$500 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 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 \$50 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 \$50 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.

13.110.130 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 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.

13.110.140 Retention of Records.

Each employer shall maintain for at least three 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.

13.110.150 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.

13.110.160 No Preemption of Higher Standards.

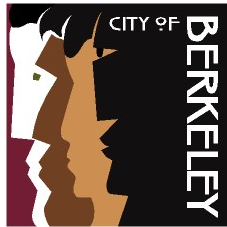
The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not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

13.110.170 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

DRAFT



Kate Harrison
Vice Mayor, District 4

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: April 12, 2022

Item #: 40a.

Item Description: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110

Submitted by: Vice Mayor Harrison

Recommendation:

1. Delay Council consideration of the Fair Workweek Ordinance to a date certain: the May 24, 2022 Council meeting, to provide HHCS staff with additional time to consider staffing needs with regard to enforcement.
2. Submit to the June 2022 Budget Process of approximately \$104,863 in General Funds with additional benefits to hire another Community Development Project Coordinator to assist with enforcement of this ordinance and other labor laws and regulations.

Background:

Vice Mayor Harrison originally submitted this ordinance to the Labor Commission in 2018. Due Council consideration and enactment of this ordinance continues to be a top priority for workers within across the city, including within the City Departments.

While the pandemic has been extremely challenging for businesses, workers have also suffered greatly. Indeed, the fight for worker rights has received renewed attention during the pandemic and following high profile unionization efforts at Starbucks and Amazon. It is in the public interest for the City of Berkeley to finish the work its started in 2018 and finally stand in solidarity with part-time workers whose schedules are precarious and uncertain. The proposed Fair Work Week Ordinance, modelled on ordinances in neighboring cities and those across the nation, would bring predictability and added compensation to part-time workers.

Vice Mayor Harrison's office respectfully disagrees that this ordinance should be referred to a Council Policy Committee for up to another 120 days. This ordinance was already duly considered by the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week in 2018. In addition, the Labor Commission considered the ordinance

closely for nearly four years and submitted its updated version of the ordinance for Council action.

In consulting with the Deputy City Manager and the Director of the Health, Housing & Community Services Department, it is prudent to delay consideration of the ordinance for one month to the May 24, 2022 Council meeting to provide staff with additional time to consider enforcement and staffing needs to effectively implement the ordinance. This compromise avoids further and unnecessary delays and provides workers and the community with timely consideration and possible action.

This supplemental also includes an initial budget referral to hire an additional Community Development Project Coordinator to assist with enforcement of this ordinance and other labor laws and regulations.

NBER WORKING PAPER SERIES

THE EFFECTS OF THE EMERYVILLE FAIR WORKWEEK ORDINANCE ON
THE DAILY LIVES OF LOW-WAGE WORKERS AND THEIR FAMILIES

Elizabeth Ananat
Anna Gassman-Pines
John Fitz-Henley II

Working Paper 29792
<http://www.nber.org/papers/w29792>

NATIONAL BUREAU OF ECONOMIC RESEARCH
1050 Massachusetts Avenue
Cambridge, MA 02138
February 2022

This research received support from the California Wellness Foundation, the Duke Sanford School of Public Policy Pilot Fund, and the Population Dynamics Research Infrastructure Program award to the Duke Population Research Center (P2C HD065563) at Duke University by the Eunice Kennedy Shriver National Institute of Child Health and Human Development. Outstanding research assistance was provided by Laura Bellows, Sarah Harris and Ade Olayinka. Excellent project coordination was provided by Jennifer Copeland. Giovanna Merli and Candice Odgers provided helpful advice and support. Prior versions of this paper were presented at the Russell Sage Foundation, the Association for Public Policy Analysis and Management Fall Research Conference, and the Society for Research in Child Development Biennial Meeting. The views expressed herein are those of the authors and do not necessarily reflect the views of the National Bureau of Economic Research.

NBER working papers are circulated for discussion and comment purposes. They have not been peer-reviewed or been subject to the review by the NBER Board of Directors that accompanies official NBER publications.

© 2022 by Elizabeth Ananat, Anna Gassman-Pines, and John Fitz-Henley II. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

The Effects of the Emeryville Fair Workweek Ordinance on the Daily Lives of Low-Wage Workers and their Families

Elizabeth Ananat, Anna Gassman-Pines, and John Fitz-Henley II

NBER Working Paper No. 29792

February 2022

JEL No. I18,J08

ABSTRACT

Emeryville, CA's Fair Workweek Ordinance (FWO) aimed to reduce service workers' schedule unpredictability by requiring large retail and food service employers to provide advanced notice of schedules and to compensate workers for last-minute schedule changes. From a 1-in-6 sample of Emeryville retail and food service workers with young children (58 percent working in regulated businesses at baseline, the rest in the same industries in firms below the size cutoff for regulation), this study gathered daily reports of work schedule unpredictability and worker and family well-being over three waves before and after FWO implementation (N=6,059 observations). The FWO decreased working parents' schedule unpredictability relative to those in similar jobs at unregulated establishments. The FWO also decreased parents' days worked while increasing hours per work day, leaving total hours roughly unchanged. Finally, parent well-being improved, with significant declines in sleep difficulty.

Elizabeth Ananat
Barnard College
Columbia University
3009 Broadway
Office 1019 Milstein Building
New York, NY 10027
and NBER
eananat@barnard.edu

John Fitz-Henley II
Sanford School of Public Policy
Duke University
Durham, NC 27510
john.fitz.henley@duke.edu

Anna Gassman-Pines
Sanford School of Public Policy
Duke University
Box 90245
Durham, NC 27708
agassman.pines@duke.edu

Even prior to the COVID-19 pandemic, low-income families were grappling with a work landscape that had changed dramatically over the last half century. Pressures of globalization and trade, and automation, led to job destruction in many industries, particularly those such as manufacturing that in the past led to stability for less-educated workers. In their place came service work, with lower wages and more unstable employment and hours (Autor, Dorn et al. 2013). At the same time, earnings volatility increased across socio-economic levels, most markedly among lower-income people (Gottschalk and Moffitt 2009, Dynan, Elmendorf et al. 2012, Morduch and Schneider 2017). These features of work left families with high and increasing levels of instability and unpredictability in work and earnings.

Even among stably employed service-sector workers, working parents faced additional forms of uncertainty. Managerial innovations have changed the daily operations of retail and food service firms such that service workers experience great daily uncertainty in both pay and hours. For example, the managerial tactic of “on-call scheduling,” in which employers facing variable customer demand minimize labor costs by requiring workers to be available for work but not compensating them for their availability if they are not needed, introduces significant unpredictability into workers’ days. By increasing uncertainty, on-call scheduling practices, in addition to last-minute schedule changes and shift cancellations, may increase parents’ difficulties in balancing work and family demands. That type of schedule unpredictability has been shown to be very common among low-wage workers (Lambert, Fugiel et al. 2014, Schneider and Harknett 2019, Ananat and Gassman-Pines 2021). Previous work has also established that, conditional on family fixed effects, days with schedule unpredictability lead to worse worker health than days in which work schedules go as expected (Ananat and Gassman-Pines 2021).

Partially in response to concerns about the harms to workers and families from schedule unpredictability, in the last 10 years governments at various levels across the United States have begun considering new regulations to limit unpredictability and compensate workers when it occurs. This paper, based on data collected prior to the pandemic, builds on the emerging research on the effects of such policy changes by examining the effects of the 2017 Fair Workweek Ordinance (FWO) in Emeryville,

CA, on working parents' work schedules, and worker and family well-being. While the context of low-wage work has shifted in the wake of the pandemic, understanding the challenges families were facing prior to its onset can help us understand how to restructure employment policies going forward.

We focus on a highly policy relevant group of workers: parents with young children. In so doing, this study is the first to provide evidence of the effects of a local policy aimed at deterring work schedule unpredictability on working parents' schedules and on worker and family well-being. To do so, this study used a novel sample recruitment strategy with an innovative survey data collection protocol, daily surveys using short message service (SMS) text messages, over three waves of data collection. This study is also the first to investigate this type of policy change in Emeryville, adding to ongoing work in Seattle and Oregon to build the base of knowledge about how schedule stability laws affect working families.

We recruited nearly 100 Emeryville hourly service workers with young children, a 1-in-6 sample of the universe of affected workers, using venue-time sampling, and surveyed them daily for 30 days over each of three study waves, all prior to the onset of the pandemic (2017-2018). This approach allowed us to identify how the work and family experiences of affected workers changed after the FWO, relative both to their experiences at baseline and to the experiences of workers who were otherwise similar but worked for Emeryville businesses that fell below the FWO's size thresholds.

Work Schedule Unpredictability

Recent surveys of U.S. workers underscore the ubiquity of a variety of different types of schedule precarity, including schedule instability and unpredictability, among low-wage workers. For example, using the NLSY, researchers found that 41 percent of workers receive notice of their schedules only one week ahead of time or less (Lambert, Fugiel et al. 2014). Fluctuations in work hours are also substantial, with almost 75 percent reporting fluctuations in the number of hours they worked per week over the last month. Similarly, a survey of hourly workers in large retailers found that 60 percent of workers have variable hours and that 60 percent of workers have less than two weeks' notice of their work schedules (Schneider and Harknett 2019). In Emeryville, the vast majority, 87 percent, of a representative sample of

parents with young children reported some unanticipated work schedule change during a one-month period, with 58 percent of parents reporting at least one canceled shift (Ananat and Gassman-Pines 2021).

Estimates suggest that about one in six hourly workers has a young child (Schwartz, Wasser et al. 2015), and prior research has established that schedule unpredictability is associated with worse worker and family well-being. Surveys of low-wage workers at a single point in time have shown that those with more unstable schedules report more psychological distress, worse sleep quality, and more parenting stress (Schneider and Harknett 2019). Unstable and unpredictable work schedules are also correlated with lower-quality parent-child interactions (Henly, Shaefer et al. 2006) and increased work-life conflict (Luhr, Schneider et al. this volume, Henly and Lambert 2014).

Research focusing on day-to-day variation in work schedules underscores the negative effects on workers and their families from unanticipated work schedule changes. In Emeryville, instances of work schedule unpredictability on any given day were related to worse daily mood and sleep quality for working parents (Ananat and Gassman-Pines 2021). Similarly, research has shown that on days when parents are “on-call” for work hours, they reported increased daily negative mood (Bamberg, Dettmers et al. 2012, Dettmers, Vahle-Hinz et al. 2016) and worse daily sleep quality (Härmä, Karhula et al. 2018, Sprajcer, Jay et al. 2018) than days when they are not “on-call.”

Fewer prior studies focused on day-to-day variability in work schedules have examined the effects of work schedule unpredictability on other aspects of daily family wellbeing beyond parent mood and sleep quality. However, a related literature shows that daily parenting behaviors and child well-being were affected by daily nighttime work hours, with nighttime hours related to less daily parent time spent together with adolescent children, and harsher interactions between parents and children in early childhood (Gassman-Pines 2011, Lee, Davis et al. 2017). Increased parental nighttime work also led to less positive daily child behavior among preschool-aged children (Gassman-Pines 2011).

The findings from studies examining daily variation in work schedules are consistent with those from cross-sectional studies. Those examining daily variation, however, are able to use family fixed effects to control for all measured and unmeasured stable differences between families that might be

related to both work schedule unpredictability and family wellbeing. The research focused on within-family variation from day to day cannot be biased by between-family differences, such as parental personality or motivation. Thus, taken together, the evidence suggests that schedule unpredictability is not only correlated with worse outcomes for workers and their families, but actually causes worse well-being.

Policies to Regulate Service Workers' Schedules

Regulation and legal standards played a large role in shaping today's workplaces, e.g. through minimum wages and workplace safety requirements, and led to current U.S. norms around schedules, such as the 8-hour workday. But in recent years, labor-market regulation has paid little attention to schedules, despite dramatic shifts in the nature of scheduling practices. While earlier schedule regulations focused on preventing employers from extracting too much labor from workers, many workers today instead fear unpredictability in work and the instability in earnings that results. In response to research demonstrating links between unpredictable work schedules and harm to workers, and due to concerted labor organizing efforts (Ananat, Gassman-Pines et al. 2020), policymakers in localities and states have passed new regulations related to service workers' schedules. These policies represent an innovational shift for local labor regulation and have been passed in Emeryville, CA, Chicago, New York City, Philadelphia, San Francisco, Seattle, and the state of Oregon. Each of the policies are unique but largely share the same general features. In particular, they require large employers to provide advanced notice of work schedules to their hourly workers and to compensate workers if schedules subsequently change.

Emeryville, CA's Fair Workweek Ordinance

Passed in early 2017, the Emeryville Fair Workweek Ordinance (FWO) aims to stabilize schedules of hourly retail and food-service workers with several provisions. First, hourly workers must receive two weeks' advanced notice of their schedules. Second, workers have the right to decline previously unscheduled hours without retaliation if they are given less than two weeks' notice of hours. Third, workers are eligible for compensation for schedule changes that occur within two weeks and, in particular, for "stability pay" of up to 4 hours or half of a shift paid when a shift is cancelled, with the amount of pay increasing the closer to the shift the cancellation is made. Fourth, the FWO gives workers

the right to decline hours if they are within 11 hours of the previous shift, and workers are to be paid time and a half for shifts that fall within 11 hours of each other (so-called “clopenings”).

The provisions of the Emeryville FWO apply to “large” retail and food service employers, defined as more than 55 employees globally for retail employers and both more than 55 employees globally and 20 or more employees in Emeryville for food service employers. These cutoffs mean there is some arbitrariness to which firms are treated: the large international sandwich chain Subway, for example, has fewer than 20 Emeryville employees and is untreated, while some local, single-location stores and restaurants have more than total 55 employees and are treated.

The Emeryville FWO was implemented in two phases. Beginning on July 1, 2107, the ordinance officially became effective and the city initiated a so-called “soft roll-out.” During the soft roll-out, the city investigated complaints but did not impose fines against employers who were not compliant. They also held employer- and employee-focused forums to educate stakeholders on the ordinance’s provisions and created and disseminated written educational materials. Beginning on January 1, 2018, the city began the full enforcement of the ordinance, including fines for non-compliance. Enforcement of the ordinance is primarily conducted via an employee-driven complaint system. If employers are found to have violated the ordinance, they can be fined up to \$500 per violation and \$1,000 for each employee retaliated against.

Preliminary Evidence on Effects of Scheduling Policies

Emerging research from Seattle and Oregon sheds light on the effects of such policies on workers, as well as the role of managers in policy implementation. In terms of effects on workers, an evaluation of workers with a range of family statuses showed significant changes in workers’ schedules after the implementation of the Seattle policy. In particular, in the first year of implementation, the Seattle policy increased the share of workers receiving advanced notice of their work schedule and the share of workers receiving predictability pay when their hours were changed (Harknett, Schneider et al. 2019). In the second year of implementation, addition benefits were observed, including a reduction in last-minute schedule changes and improved worker well-being as measured by increases in overall happiness and self-reported sleep quality (Harknett, Schneider et al. 2021). Consistent with the Seattle findings, an

evaluation of the early implementation of Oregon’s statewide policy also revealed that the majority of workers received advance notice of their schedule (Loustaunau, Petrucci et al. 2020).

These results generally align with studies that have focused on front-line managers as the conduits for policy implementation on behalf of employers. One year after policy implementation, managers in Seattle, for example, largely reported giving workers the required 14 days advanced notice of their shifts and following rules around shift cancellations, suggesting that implementing some of the Seattle law’s provisions were relatively straightforward (Haley and Lambert 2021). Employers struggled, however, with implementing other aspects of the law: Managers reported lower levels of compliance with rules around extending shifts and offering additional hours to current employees before hiring new ones. Similar patterns of results were reported by managers in Oregon (Loustaunau, Petrucci et al. 2020). In Oregon, an additional provision enabling managers to maintain voluntary waitlists facilitated frequent last-minute changes, making implementation easier for the employer but reducing the law’s reach from employees’ perspectives. Although the full set of costs and benefits to employers of these types of scheduling regulations is not yet known, related research suggest that employers could expect to see improvements in worker productivity and sales. A randomized experiment of a schedule stability intervention in retail stores showed such improvements in productivity and sales (Williams, Lambert et al. 2018, Kesavan, Lambert et al. 2020). Other research also suggest that improved work hours predictability leads to increased productivity (Hashemian, Ton et al. 2020).

The Current Study

With only a limited set of localities passing scheduling regulations, evaluations of policy change in each locality are crucial to building the base of knowledge about how such regulations affect workers and families. This study addresses this need by providing evidence on the effects of the scheduling regulations implemented in Emeryville, CA and by focusing on a highly policy-relevant population that has not been the focus of work investigating the effects of scheduling regulations in other jurisdictions, parents of young children.

Identification

Our main identification strategy is a difference-in-difference approach that compares over-time changes in outcomes for workers in “treatment” jobs—i.e. jobs at businesses that meet the size requirements to be regulated under Emeryville’s Fair Workweek Ordinance—to changes in outcomes for workers employed at similar jobs in businesses that fall short of the size requirements. Difference-in-difference designs rely on the assumption of parallel trends: the identifying assumption of our approach is that in the absence of the FWO’s implementation, the over-time changes in outcomes of workers in treatment and control jobs would have moved in parallel, and therefore any deviation in treated workers’ outcome trends from trends for workers in control jobs can be attributed to the effects of the FWO. Workers can and do hold multiple jobs; for outcomes that are defined at the worker-day level, such as sleep quality and interactions with the focal child, we define a worker as “treated” if they held at least one “treatment” job, even if they also held one or more control jobs. In robustness checks, we have defined treatment continuously, based on the share of hours worked at baseline in a treatment job; results are substantially similar (results available upon request).

A threat to the parallel trends assumption would occur if workers endogenously switch jobs in response to the FWO—that is, if treated jobs become more (or less) desirable due to the regulation, then workers with more advantages, e.g. those with better mental health, might switch sectors in response. Under those circumstances a simple difference-in-differences strategy, such as the type conducted using repeated cross-sectional surveys to evaluate policy changes, would inaccurately conflate compositional changes in the treated workforce due to the FWO with changes in individual worker outcomes due to the FWO. However, our panel structure avoids this problem by allowing us to combine the strengths of a difference-in-differences identification strategy with the complementary strengths of an individual fixed-effects approach: because we follow the same workers over time, we are able to include worker fixed effects and identify only changes in individual worker outcomes over time.

Another potential threat to the parallel trends assumption would occur if regulated versus unregulated businesses faced different shocks during the evaluation period, beyond those induced by the

FWO. The somewhat arbitrary and complex size cutoff for regulation—which does not coincide with thresholds for other regulations in Emeryville or with other meaningful market distinctions—makes it relatively unlikely, however, that treated and untreated firms will face different shocks (for example, to consumer demand or to credit access) on other dimensions over the implementation period.

METHOD

Sample recruitment

Individuals were eligible for this study if they worked in an hourly position in Emeryville and had a child between ages 2 and 7. Recruitment occurred in May 2017, after the passage of FWO but prior to its enactment. We used a venue-based sampling approach to recruitment. For this purpose, we secured from the City of Emeryville a complete list of retail and food service businesses in the city. Using this list, we constructed a sampling frame of venue (business) day-time units (VDTs), randomly selected VDTs, and identified and recruited eligible individuals present in those VDTs (Muhib, Lin et al. 2001). We approached workers at each business, determined their eligibility, and asked those workers to direct us to any other currently present employee with a young child. Across VDTs, we entered each business in the area at least once, talking with over 600 workers, including at least one from each retail or food establishment in the city. We estimated, based on recent surveys of hourly retail and food service workers (Schwartz, Wasser et al. 2015), that about 15 percent of the 3,743 Emeryville hourly retail and food service workers have a young child, suggesting an eligible population of 561 workers. Of these, we talked with 170, an estimated 30 percent of eligible workers. We successfully recruited 96, or 56 percent, of the eligible workers we contacted. Our sample, although small in absolute size, reflects a substantial 1-in-6 sample of the universe of Emeryville retail and food workers with a young child. Importantly, the initial sample was balanced across: 1) retail and food firms that meet threshold local and global employment levels and are subject to regulation from the FWO and 2) otherwise similar control firms below those thresholds, which are exempt from the FWO.

Procedure and analysis sample

At the beginning of the study, respondents were asked about their demographics, health and well-being, work history, each job's hourly wage and whether it is tipped, and reports on children. Then, every day for 30 consecutive days, respondents reported on that day's work and family experiences via SMS text message. Daily survey completion rates among participants in the initial wave were very high: 61 percent of participants completed 100 percent of the daily surveys and 89 percent completed the majority (i.e. more than 15), providing substantial within-person variation for analysis.

We contacted the sample again two times: in the Fall of 2017 during the “soft roll-out” enforcement phase of FWO implementation (wave 2) and in the spring of 2018 during the full enforcement phase of FWO implementation (wave 3). Of the initial 96 participants, 76 participated in wave 2; 71 participated in wave 3. At each wave, we gathered information about changes in workers' jobs and job characteristics and then again collected reports on the day's work and family experiences via SMS text message for 30 consecutive days. In wave 2, daily participation was higher than in wave 1: 74 percent of participants completed 100 percent of the 30 daily surveys and 98 percent completed the majority of the daily surveys. In wave 3, daily participation was higher than in wave 1 or wave 2: 80 percent of participants completed 100 percent of the daily surveys and 99 percent completed the majority.

Participant compensation was structured to incentivize completion of all 30 daily surveys within each wave. In waves 1 and 2, participants received \$1.00 for each survey completed, with bonuses of \$7 and \$10 offered for each week with 7 completed surveys, respectively. In wave 3, participants received \$1.20 for each survey completed with a bonus of \$12 for each week with 7 completed surveys. An additional completion bonus for those who answered all 30 daily surveys was also offered: \$20 in wave 1, \$25 in wave 2 and \$30 in wave 3.

Our analysis sample for this study included all individuals who participated in at least one of the post-FWO implementation follow-up waves (N = 78 parents; N = ~6,000 person-days for analysis). On average, our analysis sample provided 86 days of survey responses across the waves of data collection.

All survey materials used for this study were available in both English and Spanish. All aspects of this study were approved by the Duke University Institutional Review Board (protocol #2017-0053).

Measures

Daily schedule unpredictability was characterized along a number of dimensions. We asked a series of questions about up to three jobs per respondent, based on the number of jobs reported at the initial interview for each wave. For each job, respondents were asked whether they worked that day, and if so: when they started and stopped working and whether their hours worked were their originally scheduled hours. If not, they provided their originally scheduled hours. Thus, for each day that a respondent worked at a given job, we measure whether their hours worked deviated from their originally scheduled hours at that job. Further, if respondents did not work at a given job on a given day, they were asked if they were originally scheduled to work. Thus, for each day we measure whether a respondent had a shift cancelled at that job. For both changes in work hours and shift cancellations, respondents were asked when they found out about the change: *less than one hour before the shift start time; more than one hour before the shift start time, on the day of the shift; the night before; or earlier*. Those who gave any response other than *earlier* about either a change in hours or a shift cancellation were coded as having a last-minute work schedule change at that job on that day.

To find surprise shifts, we looked at responses to the question about originally scheduled hours. In that space, many respondents offered context, stating that they were off, weren't scheduled for that day, or offering hours on the next day (e.g. on Monday saying that they were scheduled to work Tuesday). In any of these cases, we classified this as a surprise shift, rather than a change in hours. Finally, surprise shifts, along with changes in hours and canceled shifts, were combined to create an additional measure that indicates whether the respondent had any kind of schedule change at that job on any given day.

Because information was provided about each job on each day, it was possible to examine work schedule unpredictability both by job and by day. For all outcomes discussed above, the unit of analysis was the person-job-day.

Daily family and child well-being outcomes were measured as described below. Daily mood was measured with an item that asked respondents how much of the time they felt fretful, angry, irritable, anxious, or depressed on a three-point scale from *all of the time* to *none of the time*. This question was modified from a question with a four-week recall period from the Health Utilities Index (HUI) (Furlong, Feeny et al. 2001, Horsman, Furlong et al. 2003). The single item has been validated as a daily measure of negative mood as it is positively correlated with daily stressors, including daily food insecurity (Gassman-Pines and Schenck-Fontaine 2019) and daily work schedule disruptions (Ananat and Gassman-Pines 2021); it increased substantially when COVID-19 restrictions were put into place (Gassman-Pines, Ananat et al. 2020). A dichotomous indicator was created equal to 1 for those who answered *Some of the time* or *All of the time* and 0 for those who answered *None of the time*.

Daily perceived negative sleep quality was measured with a single item used in other daily survey studies (George, Rivenbark et al. 2019), asking: “How well did you sleep last night?” Answers were on a 10-point scale from *really badly* to *really well*. We treat self-reported sleep quality as a measure of daily well-being, as perceived sleep quality is associated with daily affect (Bower, Bylsma et al. 2010). The sleep quality measure was reverse-coded so that higher numbers indicated worse perceived sleep quality. This measure has been validated, as it is correlated in expected directions with negative and positive daily mood, daily self-esteem (George, Rivenbark et al. 2019) and daily work schedule disruptions, a daily stressor (Ananat and Gassman-Pines 2021).

Daily parent-child interactions was measured with two questions: “Did you punish your child today?” and “Did you lose your temper with your child today?” Dichotomous indicator variables were set equal to 1 if the parent responded *Yes* and 0 if the parent responded *No*. Both of these measures have been validated as they were both positively correlated with daily disruptions to school and care during the COVID-19 pandemic (Gassman-Pines, Ananat et al. 2021).

Finally, daily child behavior was measured with two items. Daily child uncooperative behavior was measured with a single item asking: “How much was your child uncooperative today?” Answers on a four-point scale included: *Not at all*, *Just a little*, *Some*, and *A lot*. This question was modified from an

item in the Inattention/Overactivity with Aggression Conners Rating Scale (Loney and Milich 1982), which asks parents to rate how much the adjective describes their child “at this time.” Daily child worry was measured with a single item asking: “How much did your child appear to be sad or worried today?” Answer choices on a four-point scale included: *Not at all*, *Just a little*, *Some*, and *A lot*. This question was modified from an item in the Preschool Behavior Questionnaire (Behar and Stringfield 1974), which asks parents to rate how much the child exhibits each behavior.

For both child behaviors, prior research has demonstrated the reliability and validity of multi-item scale versions adapted for measuring daily externalizing and internalizing behavior problems (Gassman-Pines 2015). In the current study, single items were used to reduce respondent burden and attrition. Dichotomous indicator variables were set equal to 1 if the parent responded *Some* or *A lot* and 0 if the parent responded *Not at all* or *Just a little*. These single-item measures have been validated as they were both positively correlated with daily disruptions to school and care during the COVID-19 pandemic (Gassman-Pines, Ananat et al. 2021).

Job type (e.g., treatment vs. control) was categorized as follows: for each of up to 3 jobs reported by a respondent, a job was coded as a “treatment” job if it was an hourly position at a venue listed by the City of Emeryville as regulated under the FWO. A job was coded as a “control” job if it was at a retail or food establishment in Emeryville that was listed by the City as not covered under the FWO, or if it was outside of Emeryville or outside of retail and food. Workers were categorized as in the treatment group if they had at least one treatment job; otherwise, they were classified as in the control group. All respondents had at least one hourly position in food service or retail in Emeryville, but respondents could also have additional jobs outside of Emeryville, outside of food or retail, and/or paid other than hourly.

Analytic strategy

To evaluate the job-experience relationships of interest, i.e. effects on schedule unpredictability, the following equation was used:

$$Y_{ijt} = \beta_0 + \beta_1 * Treat_{ij} * After_t + \beta_2 * After_t + \beta_3 * Treat_{ij} + \psi_{ij} + \tau_t + \epsilon_{ijt}$$

for outcome Y for person i in job j on day t , where ψ represents a vector of individual-by-job fixed effects and τ is an indicator for whether day t falls on a weekend. Previous research shows that both work and home experiences differ dramatically between weekends and weekdays for workers in these types of jobs (Ryan, Bernstein et al. 2010, Shrout, Bolger et al. 2010, Gassman-Pines 2011, Gassman-Pines, Ananat et al. 2020, Ananat and Gassman-Pines 2021). Because of idiosyncratic variation in individual start days, respondents experience different numbers of weekend days, which would, if we simply averaged across days within person and wave, lead to greatly increased noise in our estimates.

$Treat_{ij}$ is an indicator variable equal to one if job j was at a treated firm subject to FWO regulations, and zero otherwise. We measure job-experience outcomes (hours changes, surprise shifts, and cancelled shift) at the person-job-day, rather than person-day, level because the variation in those outcomes exists at the person-job-day level. For example, we measure canceled shifts at the person-job-day level because a worker with two jobs might have had a shift canceled at one job on a given day, while on the same day their shift at another job was not canceled. As we are interested in whether the policy affects scheduling practices such as this, and as the policy can, in some cases, affect one of a respondent's jobs but not the other, examining job outcomes separately is scientifically appropriate. Note, however, that most respondents have only one job (Table 1), so this has only a minor effect on our sample size.

$After_t$ is an indicator variable equal to one if day t falls during the post-implementation period, and zero otherwise. The definition of the post-implementation period is somewhat ambiguous because Emeryville began implementation with a “soft roll-out,” as discussed above. To accommodate this ambiguity, our main results include three separate approaches to defining pre- and post: (1) base estimates only on pre-implementation (Wave 1) and full enforcement (Wave 3) data, with full enforcement Wave 3 observations defined as post-implementation; (2) include all observations and define both soft roll-out and full-enforcement observations as post-implementation; and (3) include all observations, and estimate:

$$Y_{ijt} = \beta_0 + \beta_1 * Treat_{ij} * Wave2_t + \beta_2 * Wave2_t + \beta_3 * Treat_{ij} * Wave3_t \\ + \beta_4 * Wave3_t + \beta_5 * Treat_{ij} + \psi_i + \tau_t + \epsilon_{ijt}$$

This specification allows us to estimate the effect of the FWO during the soft roll-out (represented by the estimated value of the coefficient β_1) separately from the effect of the FWO during full enforcement (represented by the estimated value of the coefficient β_3), and we report the estimates for both effects in our main results.

Worker and family well-being (worker sleep quality and mood, parenting behaviors, and child behavior) exist only at the person-day level, evaluated using the following equation:

$$Y_{it} = \beta_0 + \beta_1 * Treat_i * After_t + \beta_2 * After_t + \beta_3 * Treat_i + \psi_i + \tau_t + \epsilon_{it}$$

for outcome Y for person i on day t . $Treat_i$ is equal to one if person i had at least one treatment job, and equal to zero otherwise. All other variables are as defined above, and a parallel specification shift was made to estimate our third approach to modeling soft roll-out and full enforcement effects.

In addition to fixed effects for each respondent, we cluster our standard errors at the person level, to reflect the fact that observations for a given respondent across jobs, days, and waves are not independent of one another. Clustering of standard errors relaxes the assumption that errors are independent and identically distributed and allows for errors within a cluster (in this case, a person) to instead be arbitrarily correlated. With 78 respondents in our analytical sample, we have a large enough sample to estimate person-fixed effects, use our average of 86 observations per respondent to estimate standard errors clustered on person, and then to estimate effects of the policy.¹

RESULTS

Descriptive Results

Table 1 reports descriptive results at baseline for the analysis sample, overall and separately for the treatment and control groups (defined at Wave 1). Respondents were, on average, 30 years old, with

¹ Our highly racially diverse sample means, however, that we have a small number of respondents of each race-ethnic identity. Estimates with fixed effects and clustering, regardless of how large their total N , do not exhibit large-sample properties when they include only a small set of clusters (Angrist & Pischke 2009), meaning our sample is unfortunately not adequate to estimate such models.

11.7 years of education, and had their first child at age 24. The majority, 86 percent, of the sample identified as female. Just under 30 percent had ever been married. They were racially and ethnically diverse: 31 percent were Hispanic (of any race); 45 percent were non-Hispanic Black; 8 percent were non-Hispanic White; 8 percent were non-Hispanic Asian-American; 1.2 percent were non-Hispanic Native American; and 7.1 percent were non-Hispanic multiracial. On average, they held 1.13 jobs. Respondents' household income averaged \$2,795 per month. The majority of respondents lived with at least one other adult: 58 percent lived with a romantic partner, and 21 percent lived with a parent. On average respondents had 1.8 children. Fifty-eight percent held at least one treatment job.

Financial strain was common among respondents. Over one in five reported generally not having enough money to make ends meet, with another half reporting generally having just enough. Nearly two-thirds of respondents doubted they could access funds to pay for a \$1000 emergency. About the same number had to borrow from friends or family in the past year to make ends meet, while 37 percent had applied for government assistance.

Not surprisingly given all these stressors, respondents reported mental health challenges as well. More than one in four reported finding it “often or always” difficult to relax, and one in ten “often or always” felt downhearted or blue. Similarly, 21 percent of respondents reported that their focal child was often “somewhat or very” worried, and 10 percent that their focal child was often “somewhat or very” unhappy, depressed, or tearful.

Across most characteristics, baseline characteristics were well-balanced across treatment and control. Among 24 characteristics, two were significantly different between the groups at the 10 percent level, consistent with chance. This balance suggests that, among hourly service workers with young children, there is little selection on observables into treatment (larger firm) versus control (smaller firm) jobs.

The exception to this balance was differences in child care arrangements, with those in treatment jobs less likely to access formal childcare and more likely to instead rely on relative care, and for more hours per week. We interpret these differences as a reflections of the jobs themselves rather than selection

into them; as shown in Figure 1, at baseline treatment jobs were more unpredictable, which, as documented in other work (Luhr et al., this volume) makes use of formal childcare more challenging. Note, however, that even if the difference in childcare suggested imbalance on unobservables between the treatment and control groups, difference-in-difference designs do not require baseline equality between treatment and control; rather, we instead rely on the much weaker assumption of parallel trends.

Table 2 summarizes all daily work and well-being outcomes across people, jobs, and waves. Because there were significant differences in these measures across race, we report both overall means and means for non-Hispanic Blacks, non-Hispanic Whites, non-Hispanic Asian-Americans, and Hispanics (of any race). Overall, some type of schedule change was made on nearly 11 percent of job-days, with a significantly greater share of days with a change among Asian-American respondents (17 percent) and a significantly lower share among White respondents (8 percent). The majority of schedule changes were last-minute, with less than 24 hours' notice; White respondents were less likely to experience changes at the last minute (4.7 percent of days versus 7.0 percent for the sample overall).

Among the types of schedule changes, a change in work hours was the most common, occurring on 5.4 percent of days on average but at almost twice that frequency, 10.3 percent of days, among Asian-Americans. Surprise shifts were the least common type of schedule change, occurring on less than 1 percent of days, with no differences across groups. Across all waves, respondents worked on about 55 percent of job-days; Asian-Americans and Hispanic respondents were more likely than average to work on a given day. The average shift length on any given work day was 7.1 hours, but was higher for Whites, at 7.4 hours, and lower for Asian-Americans, at 6.7 hours.

Finally, in terms of family well-being outcomes, negative mood was fairly common, with respondents overall reporting negative mood on 42 percent of days. White respondents reported significantly more days with negative mood (60 percent of days), while Hispanic respondents reported fewer (32 percent). Sleep difficulties were greater among Whites and lower among Asian-Americans; harsh parenting behaviors were higher among Whites and Asian-Americans than among the population

overall. Black and Asian-American parents reported more days with child uncooperativeness and child worry than did the sample overall. Child behavior problems were relatively infrequent across all groups.

Impacts of the Emeryville FWO

Table 3 reports effects of the FWO on schedule disruption outcomes; given small sample sizes, we were not able to separately estimate effects of the FWO by race and ethnicity, as discussed above. Across all models, results showed that the FWO led to a decrease in any schedule change overall, with point estimates ranging from 2.5 percentage points to 5.5 percentage points, though not all point estimates reached conventional levels of statistical significance. Results from model three suggest that decreases in schedule changes occurred right away, in the soft-roll out phase of enforcement. The estimates from our third model are also presented in Figure 1, which shows that treatment jobs had more frequent schedule changes than control jobs in the pre-period, but that rates of schedule changes for the treatment jobs declined to the same level as the control jobs once the FWO was implemented. As shown in Table 3 and Figure 1, the same pattern of results was found for last-minute changes: the FWO reduced last-minute schedule changes. Again, although not all estimates reached conventional levels of statistical significance, the pattern of findings is consistent with a decline in last-minute changes following FWO implementation for the treatment jobs relative to the control jobs.

Among the types of schedule disruptions considered, we found that surprise shifts were most strongly affected by the FWO, while point estimates for changes in work hours follow a similar, but not statistically significant, pattern (Table 3). Shift cancellations were not affected by the FWO. As shown in Figure 1, treatment jobs had more frequent surprise shifts in the pre-period but rates of surprise shifts for the treatment jobs declined once the FWO was implemented, and were lower than rates in control jobs by the full-enforcement phase.

Table 4 reports effects of the FWO on daily work and hours outcomes. Results show that the FWO decreased the likelihood of working in a treatment job on any given day. The effect size was substantial, with decreases in wave three of about 12 percentage points. As shown in Figure 1, the likelihood of working in a treatment or control job on any given day were very similar prior to the

implementation of the FWO. During the post-period, the likelihood of working in a control job on any given day increased slightly while the likelihood of working in a treatment job decreased.

At the same time, however, results also showed that the FWO increased the length of shifts on work days. By the full enforcement phase, the increase in work hours was about .4 hours, on average. When combining the two effects by considering average work hours including zeroes for non-work days, the FWO did not significantly affect hours worked within a job. Workers do not appear to have increased work in non-regulated firms in response to changes in their treatment jobs, given that average work hours across all jobs were also not significantly affected by the FWO.

Finally, Table 5 reports effects of the FWO on parent and child outcomes. Considering parental well-being, the FWO decreased sleep difficulty (defined by reverse-coding and then normalizing the sleep quality responses that had been gathered using a 1-10 scale), though not all estimates reach conventional levels of statistical significance. In wave 3, sleep difficulty decreased by nearly .28 *SD* for those in treatment jobs, relative to those in control jobs. As show in Figure 1, those in treatment jobs experienced more sleep difficulty than those in control jobs prior to the implementation of the FWO, with sleep difficulty decreasing substantially during the full enforcement phase. Effects on daily parental negative mood were also in the negative direction, but did not reach statistical significance. We did not find any effects of the FWO on either parenting behaviors or child behavior.

Robustness Checks

We conducted a variety of robustness checks (all results available on request). First, we ran all models on a balanced panel of participants who participated in all waves, rather than only in at least one post-implementation wave. Results were substantially similar to those reported here. Second, we ran all models using initial treatment status at the person-level only. Results were in the same direction and of similar magnitude to those described here but were less precisely estimated. Third, we ran all models using a continuous definition of treatment status defined by the share of total work hours worked at a treatment job at baseline; results were substantially similar. Fourth, we ran models of hours worked dropping observations for which hours information was incomplete and had to be imputed; results were

substantially similar. Fifth, we estimated all models for demographic subgroups defined by race, ethnicity, gender, and education; unfortunately, sample sizes became too small for interpretation.

DISCUSSION

Low-income families in the 21st century, especially those working in the service sector, faced high levels of unpredictability in work hours and pay, even prior to the onset of the COVID-19 pandemic and its disruptions to the labor market. Anecdotally, there seems to be little possibility that the pandemic and its related economic dislocations have improved predictability. Local regulations aimed at reducing unpredictability in work schedules are a new innovation in labor policy that were gaining traction in many localities, and one state, in the United States prior to the pandemic, but little is known about such policies' effects and, therefore, whether predictability for low-income families will be improved by encouraging more localities to adopt such policies going forward. Emeryville, CA is one of only a handful of localities that has passed such an ordinance. This paper, thus, addresses a gap in the literature by being the first to examine the effect of Emeryville's Fair Workweek Ordinance on working parents and their families.

We find that the Fair Workweek Ordinance (FWO) succeeded in reducing schedule unpredictability for workers with young children, particularly changes in start and end times of shifts and surprise shifts. The FWO also decreased the number of workdays significantly for treated workers in our sample, while increasing the hours worked on workdays and leaving total work hours insignificantly affected. It is possible that these changes were concentrated among those, like our sample, with caregiving responsibilities, and represent a re-assignment by employers of short, unpredictable, or otherwise difficult shifts from such workers to workers without caregiving responsibilities, for whom such marginal shifts are less costly. Future work should examine effects of schedule predictability legislation on different populations of workers.

The regulatory success of the FWO translated into some health benefits for workers in regulated jobs, in particular, improved sleep quality. Thus, even with a relatively small sample size, this paper thus presents important initial evidence that this type of policy change can affect work schedule

unpredictability among working parents, and can do so by impacting individual workers rather than merely by shifting sector composition.

These findings are notable in the context of the remarkable changes in work in the last half century, with increasing instability and unpredictability in employment, hours, and pay, especially for workers with less access to formal higher education. Historically, regulations played a large role in shaping today's workplaces, for example through minimum wages and anti-discrimination policy, and also created the current U.S. norms around scheduling, including the 8-hour workday and the weekend. But in recent years, regulation of the labor market has focused little attention on scheduling, despite the fact that the nature of work schedules has been shifting dramatically. In particular, while the earlier generation of scheduling regulation concentrated on preventing employers from extracting *too much labor* from workers, many of today's workers fear instead *too much variability and unpredictability* in work and pay. That is, recent concerns focus on employers shifting the risk of variable customer demand from themselves to their employees, by giving workers neither hours nor pay when demand is unexpectedly low. Indeed, the Emeryville ordinance studied in this paper was passed in response to such concerns.

Our results show that the Emeryville FWO decreased schedule changes and, in particular, last-minute schedule changes. These impacts are notable because these are the dimensions of schedule changes that our own prior research has shown to be particularly costly for working parents and their families, in terms of reduced parental well-being (Ananat and Gassman-Pines 2021). These findings are also consistent with those from an evaluation of Seattle's secure scheduling law that examined all workers (rather than focusing on parents) and found that Seattle's law also decreased last-minute schedule changes (Harknett, Schneider et al. 2021). This convergent evidence suggests that local schedule regulations can be a fruitful path for addressing unpredictability in work schedules for low-income families. Importantly, we observe these changes immediately after the law was passed, during the "soft roll-out" phase of enforcement. Although the City only began fining non-compliant businesses during full enforcement, our results suggest that simply having a law go into effect is a powerful change that leads at least some firms to comply, even if they are not at risk of being fined or penalized.

We also find that changing scheduling practices through this local ordinance leads employers in covered firms to reduce the number of shifts that employees work. However, the FWO leads to increased hours for parents on the days when they do work, leaving no significant changes in average hours worked. Given the fixed costs of working on a given day, including making child care arrangements and commuting, it is plausible that on net these scheduling changes made workers better off. Consistent with this possibility, the net effect of the Emeryville FWO was to improve workers' well-being as proxied by subjective sleep quality. Working parents, in particular, are likely to place a high value on the stability of work schedules, as stable work schedules make balancing the demands of work and family easier (Henly 2004, Henly and Lambert 2014).

The evidence related to the effects of scheduling regulation on worker sleep quality is notable for several reasons. First, these results are highly similar to those found in the Seattle evaluation; Seattle's ordinance also improved subjective sleep quality (Harknett, Schneider et al. 2021). This converging evidence underscores the role for scheduling regulation in improving workers' sleep quality. Second, service sector workers emphasize sleep disruptions and poor-quality sleep as consequences of schedule unpredictability (Human Impact Partners and Center for Popular Democracy 2016), and our own prior work in Emeryville showed these effects on a daily level (Ananat and Gassman-Pines 2021). Reductions in work schedule unpredictability may improve sleep quality for a number of reasons, including: by helping to stabilize daily routines; by facilitating circadian rhythms, which can be disrupted by unstable and unpredictable work schedules; and by reducing job strain, each of which has been linked to sleep quality (Eriksen, Bjorvatn et al. 2008, Moss, Carney et al. 2015, Kecklund and Axelsson 2016). Other aspects of work life, such as commute time, may also play a role in exacerbating links between unpredictable work schedules and worse sleep quality, as longer commutes themselves are associated with worse sleep (Petrov, Weng et al. 2018); the shift to longer work hours on fewer days may have thus contributed to better sleep by reducing total commute time.

Finally, subjective sleep quality is also a marker of well-being and an important input into both physical and mental health (Brewster, Billy et al. 1993, Bower, Bylsma et al. 2010). Worse sleep quality,

for example, is related to both heart disease in the adult population (Cappuccio, Cooper et al. 2011) and depression among parents (Park, Meltzer-Brody et al. 2013). Poor sleep quality is associated with more harsh parenting behavior (Kelly, Erath et al. 2021), and worse daily sleep quality has been found to exacerbate the effects of chronic and daily stressors on daily negative parental mood (da Estrela, Barker et al. 2018, Lillis, Hamilton et al. 2018, Mihaila and Hartley 2018). Thus, improvements in sleep quality may have the potential to lead to longer-term improvements in family functioning and child wellbeing, such as more positive parent-child interactions, reduced parental stress, and improved child behavior. Future research should investigate the mechanisms connecting unpredictable work schedules to worse sleep quality, the family well-being consequences of improved sleep quality, and moderation by other aspects of work, such as commute time. While the small population of Emeryville means we were underpowered to detect downstream effects on children's well-being even in a 1-in-6 probability sample, the implications are conceptually clear, as children are influenced and constrained by their parents' lived experiences in the labor market (Ananat, Gassman-Pines et al. 2017). Links between parental well-being and child adjustment are well established (Cummings and Davies 1994, Cummings, Keller et al. 2005, Cummings, Davies et al. 2020). Parents who are experiencing psychological distress tend to have more difficulty acting as sensitive caregivers, which can lead to increased behavior problems and other difficulties for children (Dix, Gershoff et al. 2004).

We note that our sample included only working parents with young children, a group that is particularly strongly affected by work schedule unpredictability but is not representative of all workers in the treatment firms. It is possible, for example, that workers without young children (the majority of workers) may have experienced an increase in work shifts due to the Emeryville FWO, if they were willing to add shifts on short notice. Our results are not meant to generalize to all Emeryville retail and fast food employees, but only to employees with young children, a group of *a priori* concern due to both their vulnerability and their relevance to public policy.

Our methodological approach, pioneered in this study, has several strengths that enhance the contribution of this work. First, although small, our use of a venue-time sampling strategy resulted in a

sample that is representative of Emeryville workers in retail or food service with a child between the ages of two and seven. Given that such a population is unrostered and difficult to enumerate, implementing a representative sampling strategy was a major innovation. Second, we followed our sample longitudinally, which avoids bias from compositional changes in the workforces of firms after they become regulated. Therefore, our results cannot be explained by, for example, covered businesses becoming more attractive to workers with better mental health after FWO implementation. Finally, work schedule disruptions were measured via daily surveys, which avoids recall bias, a problem we have shown in previous work to be sizeable in reporting the frequency of schedule changes (Ananat & Gassman-Pines, 2021).

We do note, however, that despite our ability to follow the same representative sample longitudinally, it is still possible that endogenous sector-switching in response to time-varying worker characteristics could be driving some of our results. For example, if employment in covered businesses became more attractive post-FWO implementation, and therefore workers who experienced changes (such as becoming newly partnered and therefore better able to manage child care) that made them more desirable employees became more likely to switch into the covered sector than they would have been in the absence of the FWO, that could threaten the validity of our findings if these same changes also had direct impacts on worker well-being. The waves, however, were fielded only a few months apart, so any changes in employee characteristics, subsequent changes in employee desirability, and resulting changes in employment would have had to unfold quite quickly.

Additionally, our small overall sample size prevented us from examining subgroup effects. Understanding the heterogeneity in effects of schedule regulations for workers with different characteristics is important for future study, and will be facilitated by research with larger sample sizes. Finally, examining effects on employers was outside the scope of this study. Emerging literature would suggest that employers likely faced some challenges in implementing the law's provisions, but also that they may have benefited in terms of enhanced worker productivity and sales. Additional research should investigate effects on employers to understand the comprehensive impacts of scheduling regulations.

SUMMARY AND CONCLUSION

To summarize, our results show that the Emeryville Fair Workweek Ordinance (FWO) reduced schedule unpredictability for working parents of young children, a group that has particular difficulty balancing work and family and is of policy concern. The FWO also decreased the number of work shifts, but increased shift length, leaving total work hours unchanged. The FWO also improved one measure of well-being: sleep quality. This is important initial evidence that secure scheduling policy changes can affect work schedule unpredictability among working parents, and, ultimately, these parents' well-being.

Parents working in the service sector face a myriad of challenges in balancing their work and family demands, which have plausibly only worsened in the wake of the COVID-19 pandemic. Work schedule unpredictability is a particularly salient and ongoing challenge that has been highlighted by workers, labor organizers, and social science scholars. Emeryville's law improved schedule predictability and well-being for working parents, suggesting that such laws could provide a pathway towards increasing predictability for low-income families.

REFERENCES

- Ananat, Elizabeth O., and Anna Gassman-Pines. 2021. "Work schedule unpredictability: daily occurrence and effects on working parents' well-being." *Journal of Marriage and Family* 81(1): 10-26.
- Ananat, Elizabeth O., Anna Gassman-Pines, Dania V. Francis, and Christina M. Gibson-Davis. 2017. "Linking job loss, inequality, mental health, and education." *Science* 356(6343): 1127-1128.
- Ananat, Elizabeth O., Anna Gassman-Pines, and Yulya Truskinovsky (forthcoming). "Increasing instability and uncertainty among low-wage workers: Implications for inequality and potential policy solutions." *The Politics of Distribution*. F. Rosenbluth and M. Weir. New York, Cambridge University Press.
- Angrist, Joshua D. and Jörn-Steffen Pischke (2009). *Mostly Harmless Econometrics*. Princeton, NJ, Princeton University Press.
- Autor, David H., David Dorn, and Gordon H. Hanson. 2013. "The Geography of Trade and Technology Shocks in the United States." *The American Economic Review* 103(3): 220-225.
- Bamberg, Eva, Jan Dettmers, Hannah Funck, Birgit Krähe, and Tim Vahle-Hinz. 2012. "Effects of On-Call Work on Well-Being: Results of a Daily Survey 1." *Applied Psychology: Health and Well-Being* 4(3): 299-320.
- Behar, Lenore, and Samuel Stringfield. 1974. "A behavior rating scale for the preschool child." *Developmental Psychology* 10: 601-610.
- Bower, Bethanne, Lauren M. Bylsma, Bethany H. Morris, and Jonathan Rottenberg. 2010. "Poor reported sleep quality predicts low positive affect in daily life among healthy and mood-disordered persons." *Journal of Sleep Research* 19(2): 323-332.
- Cummings, E. Mark, and Patrick T. Davies. 1994. "Maternal depression and child development." *Journal of Child Psychology and Psychiatry* 35(1): 73-122.
- Cummings, E. Mark, Patrick T. Davies, and Susan B. Campbell. 2020. *Developmental Psychopathology and Family Process: Theory, Research, and Clinical Implications*. Guilford Publications.
- Cummings, E. Mark, Peggy S. Keller, and Patrick T. Davies. 2005. "Towards a family process model of maternal and paternal depressive symptoms: Exploring multiple relations with child and family functioning." *Journal of Child Psychology and Psychiatry* 46(5): 479-489.
- da Estrela, Chelsea, Erin T. Barker, Sarah Lantagne, and Jean-Phillippe Guoin. 2018. "Chronic parenting stress and mood reactivity: The role of sleep quality." *Stress and Health* 34(2): 296-305.
- Dettmers, Jan, Tim Vahle-Hinz, Eva Bamberg, Niklas Friedrich, and Monika Keller. 2016. "Extended work availability and its relation with start-of-day mood and cortisol." *Journal of Occupational Health Psychology* 21(1): 105.
- Dix, Theodore, Elizabeth T. Gershoff, Leah N. Meunier, and Pamela C. Miller. 2004. "The affective structure of supportive parenting: depressive symptoms, immediate emotions, and child-oriented motivation." *Developmental Psychology* 40(6): 1212.
- Dynan, Karen, Douglas Elmendorf, and Daniel Sichel. 2012. "The evolution of household income volatility." *The BE Journal of Economic Analysis & Policy* 12(2).
- Furlong, William J., David H. Feeny, George W. Torrance, and Ronald D. Barr. 2001. "The Health Utilities Index (HUI®) system for assessing health-related quality of life in clinical studies." *Annals of Medicine* 33(5): 375-384.
- Gassman-Pines, Anna. 2011. "Low-income mothers' nighttime and weekend work: Daily associations with child behavior, mother-child interactions and mood." *Family Relations* 60: 15-29.
- Gassman-Pines, Anna. 2015. "Effects of Mexican immigrant parents' daily workplace discrimination on child behavior and family functioning." *Child Development* 18: 1175-1190.
- Gassman-Pines, Anna, Elizabeth O. Ananat, John Fitz-Henley II, and Jane Leer. 2021. "Effect of daily school and care disruptions during the COVID-19 pandemic on child behavior problems."
- Gassman-Pines, Anna, Elizabeth O. Ananat and John Fitz-Henley. 2020. "COVID-19 and parent-child psychological well-being." *Pediatrics* 146(4).

- Gassman-Pines, Anna, and Anika Schenck-Fontaine. 2019. "Daily Food Insufficiency and Worry among Economically Disadvantaged Families with Young Children." *Journal of Marriage and Family*.
- George, Madeleine J., Joshua G. Rivenbark, Michael A. Russell, Leonard Ng'eno, Rick H. Hoyle, and Candice L. Odgers. 2019. "Evaluating the Use of Commercially Available Wearable Wristbands to Capture Adolescents' Daily Sleep Duration." *Journal of Research on Adolescence* 29(3): 613-626.
- Gottschalk, Peter, and Robert Moffitt. 2009. "The rising instability of US earnings." *Journal of Economic Perspectives* 23(4): 3-24.
- Haley, Anna, and Susan Lambert. 2021. Implementing Work Scheduling Laws: Unpacking Frontline Policymaking by Retail & Food Service Managers. *Work Family Research Network Conference*. Virtual.
- Harknett, Kristen, Daniel Schneider and Véronique Irwin (2019). Worker impact study. *Evaluation of Seattle's Secure Scheduling Ordinance: Year 1 findings*. West Coast Poverty Center. Seattle, WA, West Coast Poverty Center.
- Harknett, Kristen, Daniel Schneider and Véronique Irwin (2021). *Seattle's Secure Scheduling Ordinance Year 2 Worker Impact Report*. Cambridge, MA, The Shift Project.
- Härmä, Mikko, Kati Karhula, Annina Ropponen, Sampsa Puttonen, Aki Koskinen, Anneli Ojajärvi, Tarja Hakola, Jaana Pentti, Tuula Oksanen and Jussi Vahtera (2018). "Association of changes in work shifts and shift intensity with change in fatigue and disturbed sleep: a within-subject study." *Scandinavian Journal of Work, Environment and Health* 44(4): 394-402.
- Hashemian, Mahdi, Zeynep Ton and Hazhir Rahmandad (2020). "The Effect of Unstable Schedules on Unit and Employee Productivity." Social Science Research Network. <https://ssrn.com/abstract=3839673>
- Henly, Julia R. (2004). "Non-standard Work and Family Life: Themes from a Qualitative Study of Low-income Mothers Employed in the Retail Sector." Association of Public Policy Analysis and Management Fall Conference. Georgia (October 2004).
- Henly, Julia R. and Susan J. Lambert (2014). "Unpredictable work timing in retail jobs: Implications for employee work-life conflict." *ILR Review* 67(3): 986-1016.
- Henly, Julia R., H. Luke Shaefer and Elaine Waxman (2006). "Nonstandard work schedules: Employer- and employee-driven flexibility in retail jobs." *Social Service Review* 80(4): 609-634.
- Horsman, John, William Furlong, David Feeny and George Torrance (2003). "The Health Utilities Index (HUI®): concepts, measurement properties and applications." *Health and quality of life outcomes* 1(1): 54.
- Human Impact Partners and Center for Popular Democracy (2016). *Scheduling away our health: how unpredictable work hours affect health and well-being*. The Center for Popular Democracy.
- Kelly, Ryan J., Stephen A. Erath, Olivia Martin-Piñón and Mona El-Sheikh (2021). "Longitudinal relations between parents' sleep problems and harsh parenting." *Journal of Family Psychology*.
- Kesavan, S., S. Lambert, Joan Williams and Pradeep Pendem (2020). "Doing Well By Doing Good: Improving Store Performance with Employee-friendly Scheduling Practices at the Gap, Inc." Social Science Research Network. <https://ssrn.com/abstract=3731670>
- Lambert, Susan J., Peter J. Fugiel and Julia R. Henly (2014). "Precarious work schedules among early-career employees in the US: A national snapshot." *Research brief*. Chicago: University of Chicago, *Employment Instability, Family Well-Being, and Social Policy Network (EINet)*.
- Lee, Soomi, Kelly D. Davis, Susan M. McHale, Erin L. Kelly, Ellen E. Kossek and Ann C. Crouter (2017). "When mothers' work matters for youths' daily time use: Implications of evening and weekend shifts." *Journal of child and family studies* 26(8): 2077-2089.
- Lillis, Teresa A., Nancy A. Hamilton, Sarah D. Pressman, Maisa S. Ziadni, Christina S. Khou, Lauren E. Boddy and Linzy M. Wagner (2018). "Sleep quality buffers the effects of negative social interactions on maternal mood in the 3–6 month postpartum period: a daily diary study." *Journal of behavioral medicine* 41(5): 733-746.
- Loney, Jan and Richard Milich (1982). "Hyperactivity, inattention, and aggression in clinical practice." *Advances in development and behavioral pediatrics*. M. Wolraich and D. K. Rough. Greenwich, CT, JAI Press. 3: 113-147.

- Loustaunau, Lola, Larissa Petrucci, Amelia Coffey, Eleanor Lauderback, H. Elizabeth Peters, Ellen Scott and Lina Stepick (2020). *Combating Unstable Schedules for Low-wage Workers in Oregon*. Urban Institute.
- Sigrud Luhr, Daniel Schneider, and Kristen Harknett. "Parenting without Predictability: Precarious Schedules, Parental Strain, and Work-Life Conflict." *RSF: The Russell Sage Foundation Journal of the Social Sciences*. Volume number (Issue number): Page range. DOI:
- Mihaila, Iulia and Sigan L. Hartley (2018). "Parental sleep quality and behavior problems of children with autism." *Autism* 22(3): 236-244.
- Morduch, Jonathan and Rachel Schneider (2017). *The financial diaries: How American families cope in a world of uncertainty*. Princeton, NJ, Princeton University Press.
- Muhib, Farazana B., Lillian S. Lin, Ann Stueve, Robin L. Miller, Wesley L. Ford, Wayne D. Johnson, Philip J. Smith and Community Intervention Trial for Youth Study Team (2001). "A venue-based method for sampling hard-to-reach populations." *Public health reports* 116(1 suppl): 216-222.
- Park, Eliza M., Samantha Meltzer-Brody and Robert Stickgold (2013). "Poor sleep maintenance and subjective sleep quality are associated with postpartum maternal depression symptom severity." *Archives of women's mental health* 16(6): 539-547.
- Ryan, Richard M., Jessey H. Bernstein and Kirk W. Brown (2010). "Weekends, Work, and Well-Being: Psychological Need Satisfactions and Day of the Week Effects on Mood, Vitality, and Physical Symptoms." *Journal of Social and Clinical Psychology* 29(1): 95-122.
- Schneider, Daniel and Kristen Harknett (2019). "Consequences of Routine Work-Schedule Instability for Worker Health and Well-Being." *American Sociological Review* 84(1): 82-114.
- Schwartz, Ari, Michael Wasser, Merritt Gillard and Michael Paarlberg (2015). *Unpredictable, unsustainable: The impact of employers' scheduling practices in D.C.* D.C. Jobs with Justice.
- Shrout, Patrick E., Niall Bolger, Masumi Iida, Christopher Burke, Marci E. J. Gleason and Sean P. Lane (2010). "Acute stress: results from a diary study of bar exam preparation." *Support Processes in Intimate Relationships*. Kieran T. Sullivan and Joanne Davila. New York, Oxford University Press: 175-199.
- Sprajcer, Madeline, Sarah M. Jay, Grace E. Vincent, Andrew Vakulin, Leon Lack and Sally A. Ferguson (2018). "Uncertain call likelihood negatively affects sleep and next-day cognitive performance while on-call in a laboratory environment." *Chronobiology international* 35(6): 838-848.
- Williams, Joan C., Susan J. Lambert, Saravanan Kesavan, Peter J. Fugiel, Lori A. Ospina, Erin D. Rapoport, Meghan Jarpe, Dylan Bellisle, Pradeep Pandem, Lisa McCorkell and Sarah Adler-Milstein (2018). *Stable Scheduling Increases Productivity and Sales*. The Kenan Institute of Private Enterprise.

Table 1. Sample characteristics at baseline

	Overall	No treatment job (C)	1+ treatment job (T)	Significant difference between T and C
Respondent Characteristics				
Age (mean)	29.6	30.9	28.45	+
Female	86.2%	86.7%	85.4%	
Education (mean years)	11.7	12.2	11.4	
Has 12 or more years of education	73.4%	76.9%	71.8%	
Age at First Birth (mean)	23.5	23.8	23.1	
Ever married	28.2%	36.4%	20.0%	+
Race/Ethnicity:				
Hispanic (of any race)	30.6%	31.8%	30.0%	
African-American (non-Hispanic)	44.7%	43.2%	45.0%	
Caucasian (non-Hispanic)	8.2%	4.5%	12.5%	
Asian (non-Hispanic)	8.2%	11.4%	5.0%	
Native American (non-Hispanic)	1.2%	0.0%	2.5%	
Multi-racial (non-Hispanic)	7.1%	9.1%	5.0%	
Household Characteristics				
Number of children (mean)	1.80	1.84	1.77	
Respondent currently married or living w/ partner	58.3%	61.4%	56.4%	
Respondent lives with a parent	21.4%	23.3%	17.5%	
Focal Child Characteristics				
Age (mean)	3.6	4.0	3.2	
Female	54.4%	61.4%	44.1%	
Care arrangements:				
enrolled in Head Start	35.4%	52.3%	11.8%	**
enrolled in daycare	50.0%	62.8%	32.4%	**
enrolled in afterschool	17.9%	20.9%	14.7%	
receives care from non-respondent parent	46.8%	39.5%	55.9%	
receives care from other relative	40.0%	26.2%	59.4%	**
Total hours of non-respondent care per week (mean)	38.2	30.0	47.8	**
Work situation				
at least one treatment job covered by FWO	57.7%	0.0%	100.0%	
# of jobs held by respondent (mean)	1.13	1.10	1.19	
Monthly household income (mean)	\$2,795	\$2,945	\$2,633	
Respondent Mental Health				
Often or always found it difficult to relax	26.3%	23.3%	31.3%	
Often or always felt down-hearted or blue	10.5%	7.0%	15.6%	
Focal Child Mental Health				
Often somewhat or very worried	21.5%	15.9%	29.4%	
Often somewhat or very unhappy, depressed, or tearful	10.1%	9.1%	11.8%	

N = 78; + *p* < .10

Table 2. Daily Outcomes Across Waves

	<u>Overall</u>	<u>Non- Hispanic Black</u>	<u>Non- Hispanic White</u>	<u>Non- Hispanic Asian- American</u>	<u>Hispanic (any race)</u>
<u>Person-job-days</u>					
Share with any schedule change	0.106 (0.004)	0.105 (0.006)	0.078 (0.011)	0.173 (0.015)	0.100 (0.007)
Share with last minute change	0.700 (0.003)	0.073 (0.005)	0.047 (0.009)	0.086 (0.011)	0.076 (0.006)
Share with a change in work hours	0.055 (0.003)	0.051 (0.004)	0.054 (0.009)	0.103 (0.012)	0.051 (0.005)
Share with a cancelled shift	0.041 (0.002)	0.043 (0.004)	0.017 (0.005)	0.064 (0.009)	0.040 (0.005)
Share with a surprise shift	0.010 (0.001)	0.012 (0.002)	0.007 (0.003)	0.006 (0.003)	0.010 (0.002)
Share worked today	0.547 (0.006)	0.509 (0.009)	0.503 (0.021)	0.613 (0.019)	0.603 (0.011)
Mean hours worked on work days	7.12	7.15	7.39	6.73	7.17
standard deviation	2.01 (0.03)	2.02 (0.05)	1.62 (0.10)	2.00 (0.10)	1.99 (0.06)
Mean hours worked including non-work days	3.83	3.49	3.70	4.08	4.11
standard deviation	3.84 (0.05)	3.84 (0.07)	3.87 (0.16)	3.64 (0.14)	3.85 (0.09)
<i>N</i>	6,945	3,107	575	671	1,875
<u>Person-days</u>					
Share parent had negative mood	0.422 (0.006)	0.423 (0.010)	0.598 (0.020)	0.447 (0.020)	0.361 (0.012)
Raw Sleep Difficulty (1-10 scale) (mean)	2.9	2.8	3.8	2.6	2.8
standard deviation	2.21 (0.03)	2.2 (0.04)	1.92 (0.08)	1.45 (0.06)	2.48 (0.06)
Share lost temper	0.092 (0.004)	0.097 (0.006)	0.078 (0.011)	0.113 (0.013)	0.093 (0.007)
Share punished child	0.084 (0.004)	0.071 (0.005)	0.134 (0.014)	0.108 (0.013)	0.077 (0.007)
Share child was uncooperative most/all of the day	0.139 (0.004)	0.159 (0.007)	0.137 (0.014)	0.187 (0.016)	0.099 (0.007)
Share child was worried most/all of the day	0.054 (0.003)	0.063 (0.005)	0.045 (0.009)	0.087 (0.011)	0.032 (0.004)
<i>N</i>	6,059	2,610	575	611	1,653

Standard errors in parentheses.

Table 3. Effect of Emeryville Fair Workweek Ordinance on daily work schedule disruptions

	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects
<u>Outcome: Any schedule change</u>			
Policy impact ^{a b}	-0.037 (0.029)	-.042+ (0.024)	-0.025 (0.028)
Wave 2 policy impact			-.055* (0.025)
<u>Outcome: Last-minute schedule change</u>			
Policy impact ^{a b}	-0.032 (0.022)	-.034+ (0.019)	-0.029 (0.021)
Wave 2 policy impact			-.039+ (0.020)
<u>Outcome: Change in work hours</u>			
Policy impact ^{a b}	-0.031 (.022)	-0.027 (.021)	-0.021 (.024)
Wave 2 policy impact			-0.031 (.022)
<u>Outcome: Canceled shift</u>			
Policy impact ^{a b}	0.012 (.015)	0.002 (.011)	0.014 (.014)
Wave 2 policy impact			-0.008 (.012)
<u>Outcome: Surprise shift</u>			
Policy impact ^{a b}	-.019* (.007)	-.017* (.007)	-.019* (.007)
Wave 2 policy impact			-.016* (.008)

^a Treatment x Wave 3 for Models 1 and 3

^b Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 4. Effect of Emeryville Fair Workweek Ordinance on daily work and work hours

	Model 1: Wave 3 only as Post	Model 2: Waves 2 and 3 as Post	Model 3: Waves 2 and 3 unique effects
<u>Outcome: Worked today</u>			
Policy impact ^{a b}	-.128* (.064)	-.098* (.048)	-.118+ (.058)
Wave 2 policy impact			-0.082 (.052)
<u>Outcome: Hours worked on work days</u>			
Policy impact ^{a b}	.509* (.250)	0.185 (.254)	.393+ (.233)
Wave 2 policy impact			0.009 (.316)
<u>Outcome: Hours worked including non-workdays</u>			
Policy impact ^{a b}	-0.474 (.515)	-0.433 (.401)	-0.381 (.479)
Wave 2 policy impact			-0.475 (.437)
<u>Outcome: Hours worked across all jobs (including non-work days)</u>			
Policy impact ^{a b}	-0.698 (.743)	0.441 (.666)	-0.623 (.734)
Wave 2 policy impact			1.372+ (.818)

^a Treatment x Wave 3 for Models 1 and 3

^b Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 5. Effect of Emeryville Fair Workweek Ordinance on daily family well-being

	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects
Parental well-being	Outcome: Parent negative mood			Outcome: Parent sleep difficulty		
Policy impact ^{a,b}	-3.740 (5.397)	-0.869 (4.172)	-3.839 (5.228)	-.281* (0.137)	-0.196 (0.124)	-.282* (0.136)
Wave 2 policy impact			1.738 (3.991)			-0.118 (0.142)
Parenting behaviors	Outcome: Lost temper			Outcome: Punished child		
Policy impact ^{a,b}	-2.306 (1.976)	-1.693 (1.684)	-2.564 (1.886)	2.507 (2.319)	1.820 (1.846)	1.864 (2.269)
Wave 2 policy impact			-1.031 (2.216)			1.699 (1.999)
Child well-being	Outcome: Child uncooperative			Outcome: Child worried		
Policy impact ^{a,b}	-1.328 (4.319)	-2.168 (3.242)	-2.014 (4.161)	0.893 (2.383)	0.087 (1.878)	0.211 (2.355)
Wave 2 policy impact			-2.539 (3.166)			-0.147 (1.811)

^a Treatment x Wave 3 for Models 1 and 3

^b Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 6. Intent-to-Treat Analysis of Effect of Emeryville Fair Workweek Ordinance on daily work schedule disruptions

	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects
<u>Outcome: Any schedule change</u>			
Policy impact ^{a b}	-0.129*	-.042+	-0.025
	(0.064)	(0.024)	(0.028)
Wave 2 policy impact			-.055*
			(0.025)
<u>Outcome: Last-minute schedule change</u>			
Policy impact ^{a b}	-0.032	-.034+	-0.029
	(0.022)	(0.019)	(0.021)
Wave 2 policy impact			-.039+
			(0.020)
<u>Outcome: Change in work hours</u>			
Policy impact ^{a b}	-0.031	-0.027	-0.021
	(.022)	(.021)	(.024)
Wave 2 policy impact			-0.031
			(.022)
<u>Outcome: Canceled shift</u>			
Policy impact ^{a b}	0.012	0.002	0.014
	(.015)	(.011)	(.014)
Wave 2 policy impact			-0.008
			(.012)
<u>Outcome: Surprise shift</u>			
Policy impact ^{a b}	-.019*	-.017*	-.019*
	(.007)	(.007)	(.007)
Wave 2 policy impact			-.016*
			(.008)

^a Treatment x Wave 3 for Models 1 and 3

^b Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 7. Intent-to-Treat Analysis of Effect of Emeryville Fair Workweek Ordinance on daily work and work hours

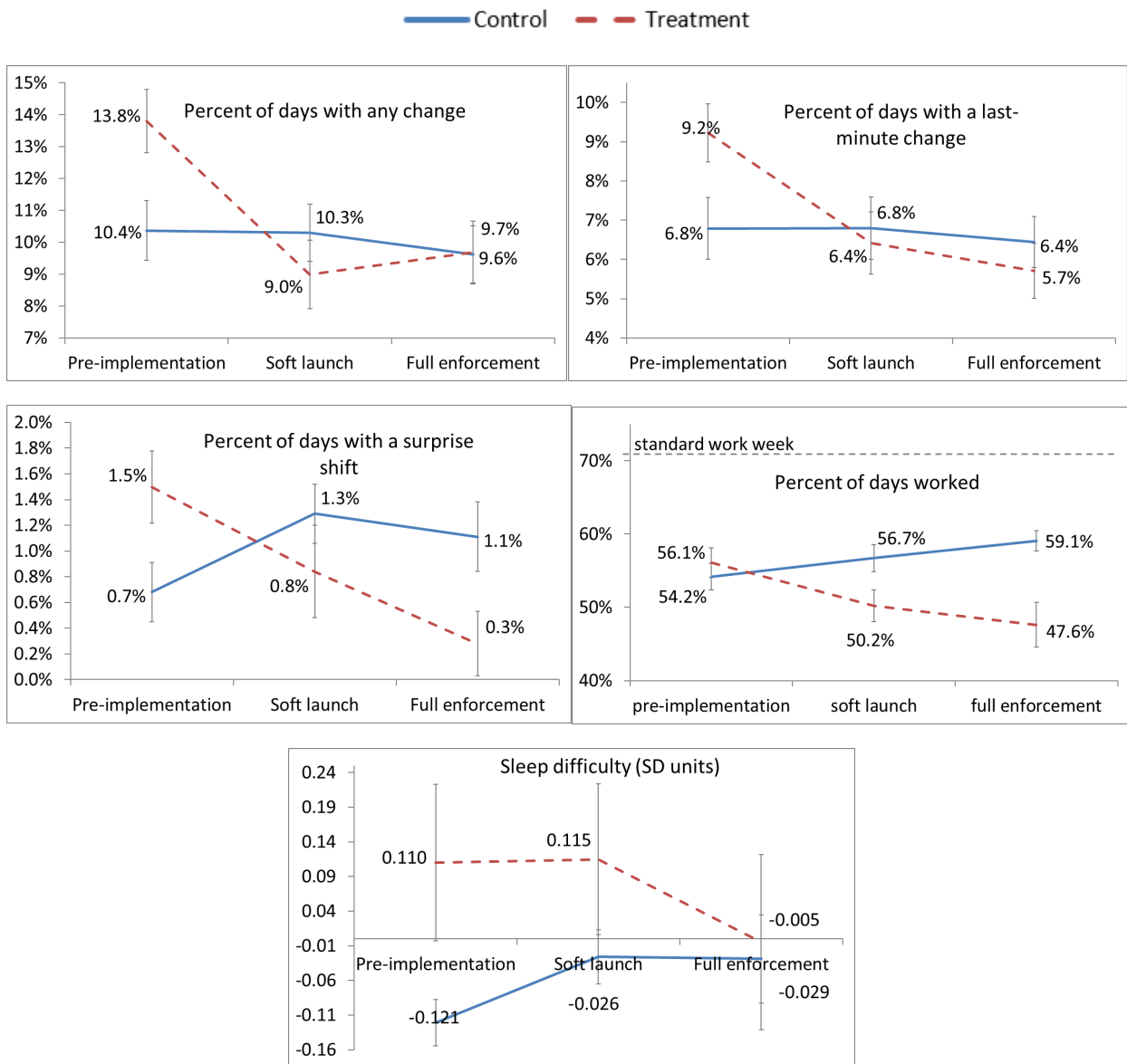
	Model 1: Wave 3 only as Post	Model 2: Waves 2 and 3 as Post	Model 3: Waves 2 and 3 unique effects
<u>Outcome: Worked today</u>			
Policy impact ^{a,b}	-.129* (.064)	-.098* (.048)	-.118+ (.058)
Wave 2 policy impact			-0.082 (.052)
<u>Outcome: Hours worked on work days</u>			
Policy impact ^{a,b}	.509* (.250)	0.185 (.254)	.393+ (.233)
Wave 2 policy impact			0.009 (.316)
<u>Outcome: Hours worked including non-workdays</u>			
Policy impact ^{a,b}	-0.474 (.515)	-0.433 (.401)	-0.381 (.479)
Wave 2 policy impact			-0.475 (.437)
<u>Outcome: Hours worked across all jobs (including non-work days)</u>			
Policy impact ^{a,b}	-0.698 (.743)	0.441 (.666)	-0.623 (.734)
Wave 2 policy impact			1.372+ (.818)

^a Treatment x Wave 3 for Models 1 and 3

^b Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Figure 1.





Commission on Labor

ACTION CALENDAR

November 21, 2022

(Continued from November 3, 2022)

To: Honorable Mayor and Members of the City Council

From: Commission on Labor

Submitted by: Michael Berne, Chairperson, Commission on Labor

Subject: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110

RECOMMENDATION

Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.110.

POLICY COMMITTEE RECOMMENDATION

On September 22, 2022, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Hahn/Taplin) to forward the Commission on Labor's item to Council with a positive recommendation to adopt the version of the ordinance dated "7/7/22" that was presented to the Committee at the July 11, 2022 meeting. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

This ordinance provides for both private enforcement and enforcement by the City. Comparable jurisdictions report a small number of complaints annually, but additional staffing may be required to investigate complaints and hold enforcement hearings. Temporary staffing and one-time mailing costs will be required to conduct outreach to covered employers. The Commission anticipates that these cost projections will be quantified in a companion staff report.

SUMMARY

Key features of the proposed ordinance include:

Scheduling Notification and Requests

- Schedules must be given 14 days in advance
- Employees must be provided with an initial estimate of hours
- Employees have the right to decline hours they are given with less than 14 days notice
- Employees shall have the right to request flexible and predictable schedules to accommodate childcare, education, second jobs etc.
- Employees have the right to decline any shift that either occurs less than 11

hours after the end of their previous shift; if accepting such a shift, will be compensated at 1½ times their regular rate of pay.

Predictability Pay

- Employees will receive predictability pay equal to a specified number of hours at their hourly rate of pay as compensation for schedule changes, ranging from 1 hour of pay for a shift scheduled less than 14 days in advance but at least 24 hours up to 4 hours of pay or hours equal to the amount of hours lost when a shift is canceled or reduced

Offer of Work to Existing Employees

- Before hiring new employees, employers must offer additional hours to existing part-time employees for any new hours available
- Employees shall have 24 hours to accept additional hours

Applicability

- In general, employers in Berkeley with 50 or more employees globally engaged in the following industry sectors: building services, healthcare, hotel, manufacturing, retail, or warehouse services;
- Restaurant employers with at least 100 employees globally and 10 or more in Berkeley;
- Franchisees associated with a network of franchises employing 100 or more employees globally and 10 or more; and
- The City of Berkeley as an employer.
- Specifically **excluded** are nonprofit organizations with fewer than 100 employees globally (which includes most arts organizations).

BACKGROUND

The City Council referred to the Commission on Labor in 2018 to draft an Ordinance to establish regulations governing the scheduling and hiring practices of qualifying businesses in Berkeley.

The City Council's referral observed that:

Even with sick pay and strong minimum wage laws, workers in Berkeley, particularly shift workers, still face unfair and exploitative work practices. Since the passage of the Affordable Care Act, a frequent issue that has arisen is the practice of businesses keeping their employees below 30 hours a week to avoid having to provide them health care. Workers may be forced to take "clopening" shifts, where an employee covers the closing shift one day and the opening shift the next day, giving them little time for rest. Shift workers frequently have shifts added or removed hours before they are set to begin, making scheduling impossible and creating financial difficulties for those with children who need child care.

Fair Workweek Ordinance

At the time of the City Council's referral, multiple jurisdictions had introduced or enacted measures to address these inequitable conditions, including the Cities of Emeryville, San Jose, San Francisco, and New York, and the State of Oregon, with the strongest at the time being the City of Emeryville. The referral directed the ordinance to be based on the City of Emeryville, strengthened with the following principles:

- The right to refuse "clopening" shifts, the right to request a flexible work arrangement, and a prohibition on refusing hours to prevent the application of benefits should apply to all employers and employees
- The right to at least two weeks notice of work schedule, to decline additional hours, and to "predictability pay" if changes are made to the schedule after the 2 two week deadline should apply to all businesses of at least 25 employees
- The requirement that new shifts first be offered to all qualified existing employees until they have at least 35 hours of work per week on average should apply to all Retail, Hotel, and Restaurant firms with at least 25 employees
- All requirements of the ordinance apply to the City of Berkeley and the Berkeley Rent Stabilization Board.

Since the referral, several of the above-mentioned jurisdictions passed the introduced ordinances, in addition to the City of Chicago. Sectoral coverage in the proposed ordinance is generally modeled after Chicago, while firm size is generally modeled after Emeryville.

After many deliberative meetings before the full Commission and a dedicated subcommittee, and considering input from stakeholders including affected employers and workers, the Commission developed a proposed ordinance taking into account the Council's direction. At its November 17, 2021 meeting, the Commission on Labor voted to appoint Commissioners Katz and Botello to draft the Fair Workweek Council report recommending adoption of the draft ordinance and to send to Council without further action from the commission. (M/S/C: Katz/Osborne. Yes: Scantlebury, Harlow, Botello, Jones, Berne. Noes: None. Absent: Medak, Schriener.) By passing this ordinance, Berkeley has the opportunity to be at the forefront of worker protections and to support the essential workers that have gotten us through this pandemic.

The Commission found many of the workers employed in the retail, restaurant, and hospitality industries suffer from low wages and unpredictable schedules, while needing to work multiple jobs just to get by. Volatile scheduling leads to difficulty in managing multiple jobs, school work, and childcare. Following the model adopted by the City of Chicago, the proposed ordinance would cover building services (including janitorial and security), healthcare, manufacturing, and warehouse services.

In response to input received by stakeholders, the proposed ordinance applies only to employers employing fifty or more employees globally (similar to Emeryville), but for restaurants or franchises would apply if the employer employed at least ten employees

in the City of Berkeley and at least one hundred globally. This attempts to balance an interest in achieving the broadest coverage of any ordinance or law in the United States, while avoiding coverage of locally owned businesses that do not have the human resources support of a franchisor.

The strengthening elements requested by the City Council are mostly incorporated, except for the applicability thresholds based on our deliberative process, compliance with federal laws as applicable, the requirement for new shift offers reflects a forty-hour workweek, and the Rent Stabilization Board employees are presumed incorporated within City of Berkeley employees.

The City Council may wish to consider a delayed effectiveness date, such as until the beginning of the following calendar year, for private sector employers to allow for the time necessary for staff to provide outreach and education to affected businesses. While private sector employers should be provided a reasonable amount of time to set up systems to ensure compliance with the ordinance, the subcommittee recommends that the City of Berkeley as an employer can and should implement the new procedures promptly.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This action is not expected to have any impact on the environment and is exempt from CEQA.

RATIONALE FOR RECOMMENDATION

Enactment of workplace protections. See background discussion.

ALTERNATIVE ACTIONS CONSIDERED

The Commission recognizes the labor standards benefits of applying the right to refuse “clopening” shifts, and refusal of hours to prevent employees from attaining thirty hours per week to all employers, and applying the two week notice and predictability pay to all sectors of the economy. The right to request a flexible working arrangement remains applicable to all employers that employ ten or more employees under the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, adopted in 2017. The proposed ordinance’s focus on uniform application to the seven sectors covered in Chicago’s model reflects (a) the expected education and outreach required for compliance, (b) the sectors where working conditions require intervention the most, and (c) that the employers covered by the proposed ordinance are in the best position to comply with its provisions in the near term, and does not preclude broadening coverage in the future.

Fair Workweek Ordinance

CITY MANAGER

See companion report.

CONTACT PERSON

Margot Ernst, Commission Secretary, 510-981-5427

Attachments:

1: Ordinance

Exhibit A: Fair Workweek Ordinance

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS; ADDING BERKELEY MUNICIPAL CODE CHAPTER 13.110

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

**CHAPTER 13.110
FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

- 13.110.010 Purpose and Intent**
- 13.110.020 Definitions.**
- 13.110.030 Applicability.**
- 13.110.040 Waiver through Collective Bargaining**
- 13.110.050 Advance Notice of Work Schedules.**
- 13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.110.070 Offer of Work to Existing Employees.**
- 13.110.080 Right to Rest.**
- 13.110.090 Right to Request a Flexible Working Arrangement.**
- 13.110.100 Notice and Posting.**
- 13.110.110 Implementation.**
- 13.110.120 Enforcement.**
- 13.110.130 Retaliation Prohibited**
- 13.110.140 Retention of Records.**
- 13.110.150 City Access.**
- 13.110.160 No Preemption of Higher Standards.**
- 13.110.170 Severability.**

13.110.010 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.

13.110.020 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 13.110.030.
- (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 13.110.060, 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.

13.110.030 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.

13.110.040 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.

13.110.050 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.

13.110.060 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.

13.110.070 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 [13.110.140](#).

(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.

13.110.080 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.

13.110.090 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.

13.110.100 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 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.

13.110.130 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.

13.110.140 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.

13.110.150 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.

13.110.160 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.

13.110.170 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.