



Alameda Labor Council, AFL-CIO



July 12, 2017

Michael Guina
City Attorney
1333 Park Ave.
Emeryville, CA 94608

Dear City Attorney Michael Guina,

I am writing on behalf of the Alameda Labor Council, AFL-CIO to register serious concerns regarding the proposed Regulations for Emeryville's Fair Workweek policy.

Emeryville passed one of the strongest Fair Workweek laws in the country. Unfortunately, the proposed Regulations have two major problems: **(1) loopholes allowing employers to change schedules without compensating employees and (2) no process for investigating and resolving complaints.**

1. The Council closed predictability pay loopholes – now the proposed rules add new ones. The Fair Workweek ordinance requires employers to set schedules with two weeks' notice. After that, employers can change the schedule – but they have to pay employees extra for each change. *The purpose of predictability pay is to reduce unnecessary changes to employee work schedules and compensate employees fairly when necessary schedule changes disrupt their lives and reduce expected income.* In the face of opposition, the Council stood firm and included in the ordinance only limited exceptions: businesses don't have to pay predictability pay when stores shut down due to threats, utility failures, or crisis (earthquake, flood, etc.), or when employees swap shifts. **For all other employer initiated changes, workers earn compensation.**

Now the proposed rules are trying to change the ordinance by adding exceptions and **severely weaken the policy.** These proposed rules would allow employers to **flout the intent of the ordinance** by:

- Extending a shift without predictability pay when the worker earns commission and needs to work longer to complete the sale. This means a manager could assign an employee to work with a customer just five minutes before the end of her shift, requiring her to stay late with no additional pay.
- Cutting a shift short due to discipline and send a worker home early without predictability pay. Managers might use this loophole to punish workers for nothing – just so they can send them home early and save money when the store is slow.
- Offering extra shifts without paying predictability pay. The goal of the ordinance is to give employees schedules they can count on. This exception works against that goal. If managers have to pay predictability pay for cancelled shifts but not added shifts, they will post a bare-bones schedule and fill the remaining shifts at the last minute. With so many part-time workers needing more hours, managers know someone will pick up the shift. And workers will face the same last-minute scheduling the ordinance was intended to curb.

The rules are intended to implement the ordinance's intent - by law, the rules CANNOT change the Ordinance by depriving employees of compensation that they would otherwise be owed. **The above exceptions must be removed before the Regulations are finalized.**

Send all correspondence to:
Executive Secretary-Treasurer
Josie Camacho, CWA 39521

President
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1st Vice President
Martha Kuhl, CNA

2nd Vice President
Gary Jimenez, SEIU 1021

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Trustees
William Schechter, IAM 1546
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Sergeant at Arms
Tony Lam, SMWIA 104



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2. The City should outline how it intends to investigate violations.

Emeryville chose to contract out the important work of enforcing workplace protections to a private for-profit company. **Yet the proposed Regulations set no standards for how the contractor will respond to complaints, investigate companies, or communicate with workers.** We know when the enforcement process and timeline is unclear, workers who take great risk in filing a complaint have even LESS confidence that their complaints will be taken seriously by the City.

The Regulations should contain provisions to **make the law real** by:

- Allowing worker to access records that show whether their employer is complying with the law, and create a presumption that the company is in violation if it ignores a request from workers or the enforcement contractor to produce records.
- Requiring the contractor to send a “demand letter” to an employer within two weeks of receiving a complaint alleging violations of law, giving the company ten days to respond to the allegations.
- Prioritizing investigations into complaints that workers have been retaliated against for asserting their rights under the ordinance. When an employee who stands up to the boss loses her job or suffers a cut in hours, her income is at risk and her coworkers may be too frightened to speak up for their own rights. It is essential that the city intervene quickly.

We encourage you to stay within the original intent of the Fair Workweek ordinance and reject these loopholes in the proposed Regulations. **We ask you to remove the exceptions to predictability pay, and outline a clear timeline for enforcement in the Regulations for Emeryville’s Fair workweek policy.**

Sincerely,

A handwritten signature in black ink that reads "Josie Camacho".

Josie Camacho
Executive Secretary Treasurer

Cc: Mayor Donahue, Vice Mayor Bauters, Councilmembers Martinez, Medina, and Patz

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