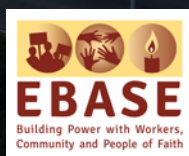
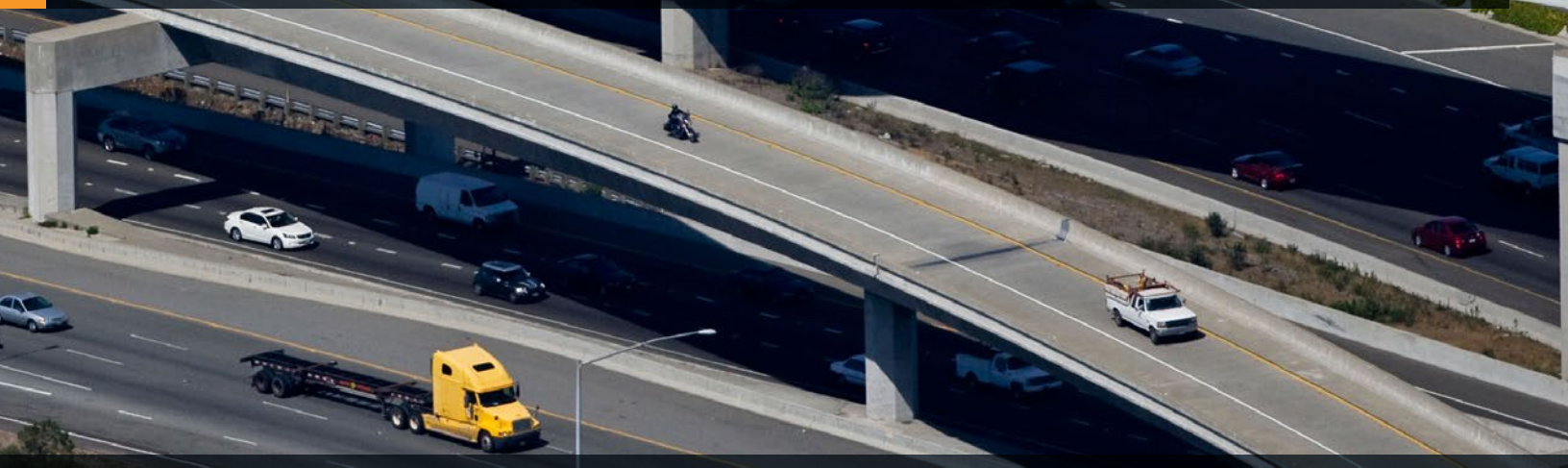




WAGES AND HOURS:

Why Workers in Emeryville's Service Sector Need a Fair Workweek



**FAIR WORKWEEK
INITIATIVE**

ABOUT THE AUTHORS



The Center for Popular Democracy works to create equity, opportunity and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda.

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The **East Bay Alliance for a Sustainable Economy (EBASE)** advances economic, racial, and social justice by building a just economy in the East Bay based on good jobs and healthy communities. We address the root causes of economic injustice by developing strategic alliances among community, labor, and people of faith to build power and create change with low-income workers and communities of color.



The **ACCE Institute** was founded in 2010 and is dedicated to improving conditions in low -and- moderate income communities in California by providing public education and training in effective, community-based movement-building. The ACCE Institute is training both community organizers and community leaders in outreach and leadership development techniques to advance community-building work. The Institute works to increase the civic engagement of low –and – moderate income communities by helping local organizations develop non-partisan civic engagement efforts that encourage active public citizenship and voting in low- and moderate-income communities. Additionally, ACCE Institute is providing trainings on important policy issues impacting low and moderate income communities across the state, and producing and disseminating materials that give everyday people the information.



The **Fair Workweek Initiative**, a collaborative effort anchored by CPD and CPD Action, is dedicated to restoring family-sustaining work hours for all working Americans. We partner with diverse stakeholders to advance an integrated set of strategies that include policy innovation, industry change, and high-road employer advocacy.

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ACKNOWLEDGMENTS

This report was written by Aditi Sen (Center for Popular Democracy) and Jennifer Lin (East Bay Alliance for a Sustainable Economy), with policy support from Rachel Deutsch (CPD). Connie Razza (CPD), Beth Trimarco (EBASE) and Anya Svanoe (Alliance of Californians for Community Empowerment) edited the report.

Wages and Hours: Why Workers in Emeryville's Service Sector Need a Fair Workweek

Executive Summary

Most Americans are paid by the hour, yet today's workweek is changing—the 40-hour workweek and the 8-hour day are no longer the norm for a significant portion of the workforce. Labor standards have not kept up with rapid changes to the fastest growing industries, like retail and food service.

Our nation's workplace protections are badly out of sync with the needs of today's working families: while many workers face wide fluctuations in the number of hours they work each week, the shifts to which they are assigned, and, therefore, their income, current law offers no guidance or protections on these fronts. We need policies that provide everyone an opportunity to get ahead. Without an update to labor standards for hourly work, more and more workers across the economy will be subject to extreme economic uncertainty due to fluctuating hours of work. To improve the lives of working people, we need new "fair workweek" policies that ensure:

- Predictable, healthy schedules;
- Employee input into schedules;
- Healthy schedules with adequate rest; and
- Access to full-time work.

Across the country, fair workweek policies have garnered strong majority support in public polling.

In Emeryville, a survey of over one hundred frontline workers in retail and food service found that:

- A vast majority (68%) held part-time jobs;
- 82 percent of surveyed workers in these front-line retail positions were people of color;
- 8 out of 10 workers had hours that fluctuated week to week;
- Nearly two out of three workers (65%) reported that they generally get their schedule a week or less in advance;
- Over two-thirds of workers wanted to work more hours than they were assigned, and
- Over half (53%) of workers reported that they were scheduled "clopening" shifts, or back-to-back closing and opening shifts with fewer than 11 hours between for rest and commuting.

These results demonstrate an urgent need for fair workweek standards, such as predictable schedules, employee input into schedules, and access to full-time work. In order for Emeryville's

4,000 people employed in large retail and fast food businesses¹ to truly have family-sustaining incomes and be able to invest in their communities—and for the city’s new minimum wage to have the intended effect of promoting livable jobs—the work hours of frontline employees in customer-facing environments like retail and food service must be sustainable.

Employers should be required to:

Commit to predictable schedules. Stable hours and reliable paychecks make it possible for working people to plan ahead to meet their responsibilities on and off the job.

- Advance notice of schedules allows working people to have a schedule they can count on and manage even when their schedule varies from week to week.
- Predictability pay compensates employees when they accommodate their employer’s last-minute scheduling changes, and creates an incentive for employers to plan ahead.

Ensure flexible, responsive work schedules. This helps create an invested, more productive workforce, and allows working people to set reasonable limitations on their schedules so that they can stay healthy, pursue educational opportunities, and spend time with their families.

- Right to request specific scheduling accommodations allows employees to ask, *without being unfairly penalized*, for the schedules that allow them to meet their various obligations.
- Mutual consent ensures that employees agree to any hours added to their schedule after it has been posted and protects employees from retaliation when they choose to decline hours.

Ensure healthy work schedules with adequate rest. It is crucial to personal and familial well-being that employees have time to commute, eat and sleep before returning to work. The practice of “clopening” is dangerous for hourly workers and those who share the road with them.

- Time to rest allows employees to decline work hours that provide fewer than 11 hours of rest between shifts.
- When an employer and employee agree on a shift with less than 11 hours’ rest, employees receive time-and-a-half pay for hours worked within that window.

Restore family-sustaining jobs in growing sectors. These are the types of jobs that help our communities thrive. Millions of Americans want to work more hours to support their families, yet too many can find only part-time jobs.

- Access to hours for current employees creates more full-time employment by offering hours of work to current qualified, part-time employees before hiring additional staff.

Emeryville has been a leader in protecting low-wage workers. In addition to instituting a landmark minimum wage and earned sick leave law, Emeryville has acted to protect low-wage workers in its hotel industry by regulating the square footage they can be expected to clean in an eight-hour day.² Now the city should enact similar work hour protections for its other low-wage sectors, retail and fast food.

Introduction

Background

Most Americans are paid by the hour, yet today's workweek is changing—the 40-hour workweek and the 8-hour day are no longer the norm for a significant part of the workforce. In particular, labor standards have not kept up with rapid changes to the fastest growing industries, like retail and food service. New workforce management technologies—those that enable employers to micro-adjust workers' schedules to match the real-time ebb and flow of commerce—are re-shaping the nature of work in growing sectors that pay low wages. These scheduling practices force the lowest-paid workers to absorb substantial fluctuations in hours and earnings. Part-time workers in the service sector—overwhelmingly women—have borne the greatest burden of these new just-in-time scheduling practices, which have largely gone unregulated. Distinctions between part-time and full-time work have grown increasingly blurry as more and more Americans experience work hour instability and economic uncertainty. Unpredictable schedules make planning childcare, school schedules, and doctor's appointments nearly impossible.

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With our nation's workplace protections badly out of sync with the needs of today's working families, we need policies that provide everyone an opportunity to get ahead. Without an update to labor standards, more and more workers across the economy will be subject to extreme economic uncertainty due to fluctuating hours of work. New policies that ensure predictable schedules, employee input into schedules, and access to full-time work are necessary to improve the lives of working people.

Recognizing the urgency of rebalancing our economy to allow working families to thrive, legislators across the country are crafting policy solutions to promote a fair workweek. San Francisco passed a landmark Retail Workers Bill of Rights and Santa Clara County passed a comprehensive ordinance covering public sector workers and contractors, guaranteeing predictable scheduling and requiring employers to offer existing employees a chance to work additional hours before hiring new staff. The federal Schedules That Work Act, championed by Senator Elizabeth Warren and others, would likewise require predictable scheduling and give workers a voice in their schedules. Legislatures in ten states, including California, introduced fair scheduling bills in 2015. Several municipalities, including Seattle and Washington DC, are now considering similar legislation, and community leaders in San Jose are gathering signatures to place an Opportunity to Work initiative on the ballot that would promote full-time work. These efforts advance common-sense policy solutions that invest in working families and give hourly workers a chance to succeed.

Across the country, voters and workers strongly support these fair workweek policies. For instance, a poll in Washington, DC, found 80 percent of respondents support or strongly support requiring employers to ask more hours to current part-time employees before hiring more part-time or temporary workers. The same poll found 87 percent of respondents support or strongly support policies requiring employers to provide employees with two weeks' notice of their schedules.³

This report examines why Emeryville needs a fair workweek, exploring the historical reasons for the high concentration of low-wage retail jobs and numerous national chain stores within this two-square-mile city. It identifies the unforeseen consequences of this overreliance on retail as an economic base, since workers in service industries such as retail and food service are most at risk of unfair

scheduling practices. It then explores the results of a survey of over 100 Emeryville workers in these two sectors, which reveals a startling reality for thousands of Emeryville’s working people: they have been systematically underemployed by large national retail and fast food employers, who also deploy just-in-time scheduling practices that require employees to be available for shifts with little notice and allow employers to cut shifts short without compensating employees for the scheduled time. As a result, these working people and their families face profound financial insecurity, while large national chains and franchises continue to flourish on taxpayer subsidies. We conclude by offering a series of recommendations, outlining a comprehensive set of policy solutions that can address this imbalance and ensure that Emeryville’s values are part of what it takes to do business in the city. With an update to Emeryville’s laws that reflect the city’s values, over 4,000 residents in Emeryville can have work that sustains their families and helps put more money back into the local economy.

Recommendations

Employers should be required to:

Commit to predictable schedules. Stable hours and reliable paychecks make it possible for working people to plan ahead to meet their responsibilities on and off the job.

- Advance notice of schedules allows working people to have a schedule they can count on and manage even when their schedule varies from week to week.
- Predictability pay compensates employees when they accommodate their employer’s last-minute scheduling changes, and creates an incentive for employers to plan ahead.

Ensure flexible, responsive work schedules. This helps create an invested, more productive workforce, and allows working people to set reasonable limitations on their schedules so that they can stay healthy, pursue educational opportunities, and spend time with their families.

- Right to request specific scheduling accommodations allows employees to ask, *without being unfairly penalized*, for the schedules that allow them to meet their various obligations.
- Mutual consent ensures that employees agree to any hours added to their schedule after it has been posted and protects employees from retaliation when they choose to decline hours.

Ensure healthy work schedules with adequate rest. It is crucial to personal and familial well-being that employees have time to commute, eat and sleep before returning to work. The practice of “clopening” is dangerous for hourly workers and those who share the road with them.

- Time to rest ensures that employees have 11 hours of between shifts or receive time and a half pay for hours worked within that time frame.
- Right to decline work hours that do not allow sufficient rest.

Restore family-sustaining jobs in growing sectors. These are the types of jobs that help our communities thrive. Millions of Americans want to work more hours to support their families, yet too many can find only part-time jobs.

- Access to hours for current employees creates more full-time employment by offering hours of work to current qualified, part-time employees before hiring additional staff.

Why Emeryville

In July 2015, all eyes were on Emeryville: it had just established paid sick days and the highest minimum wage in the country, at \$14.44 an hour for large businesses and \$12.25 an hour for small businesses. After years of rapid growth, councilmembers decided it was time to ensure Emeryville's low-wage workers were able to progress, in a city of over 10,000 residents and two to three times as many workers. This "big little city," which had over the past two decades garnered much regional attention for its "boomtown" development and growth, had made its mark again.⁴

Despite the city's small size—less than two square miles—Emeryville grew rapidly in the 1990s and 2000s, from a gritty industrial collection of brownfields to a destination for chain store, hotel, commercial office, and housing development in the East Bay. Before public redevelopment financing was dissolved in 2012, 95 percent of Emeryville was a "Redevelopment Area," giving the local government powers to funnel property tax revenue back into further development.⁵ The city's share of regional sales tax revenues reached 69 percent of the net regional gain of sales taxes from 1990 to 2001, dwarfing other larger, more populated cities.⁶

Emeryville's location makes it a trend setter in the East Bay and beyond. It sits between four freeways at the end of the Bay Bridge, nestled between Oakland and Berkeley; draws from the surrounding regional customer and workforce base; and provides easy access to San Francisco, UC Berkeley, and other major destinations, which contributes to the strength of its hospitality sector, with four major hotels within city limits.

Emeryville was a bellwether of economic justice even before it had the highest minimum wage in the country.

Emeryville was a bellwether of economic justice even before it had the highest minimum wage in the country. It became the first city with an industry-specific minimum wage in 2005, when voters passed Measure C, a voter ballot initiative that set a minimum wage and workload standards for workers at large-scale hotels. In the first year of implementation, over 100 hotel workers benefited. Over the next five years, the wage hike pumped an estimated \$1.1 million into the local economy.⁷ Emeryville has also recently become an innovator in housing, by prioritizing affordable housing and setting local impact fees at a high rate to generate the most number of affordable units.⁸

Retail in Emeryville's economy

Growing rapidly since the 1990s, Emeryville has become a corporate office center and retail and hospitality hub for the East Bay. The city's workforce is polarized at two ends: with highly paid information and technical jobs on one end, and traditionally lower wage retail, property services, and hotel and food service jobs at the other end. Emeryville's top employers in 2015 mirrored this concentration of jobs at the top and bottom, with Pixar and biotech firms Grifols Diagnostic Solutions and Amyris contributing a few thousand mostly highly paid technical workers, while IKEA, Home Depot, the Bay Street Mall and East Bay Bridge Retail Centers, four hotels, and subcontracted janitorial and other jobs from the office development creating a base of lower paid jobs.⁹

Emeryville Jobs by NAICS Industry Sector (2013)

	Count	Share
Agriculture, forestry, fishing and hunting, and mining	12	0%
Construction	674	3%
Manufacturing	2,873	14%
Wholesale trade	535	3%
Retail trade	3,102	15%
Transportation and warehousing, and utilities	616	3%
Information	2,199	10%
Finance and insurance, and real estate and rental and leasing	977	5%
Professional, scientific, and management, and administrative and waste management services	4,672	22%
Educational services, and health care and social assistance	1,822	9%
Arts, entertainment, and recreation, and accommodation and food services	2,477	12%
Other services (except public administration)	609	3%
Public administration	476	2%
Armed forces	9	0%

Source: ACS 2010-2014 American Community Survey 5-Year Estimates.

Within Emeryville, the retail industry alone employs 15 percent of the workforce, compared to 10 percent nationwide; at least another 8 percent are employed in accommodation or food service. Nearly one quarter of the city's workforce is employed in food, retail, or accommodation services. While the city's success in attracting retail led to its capturing the bulk of regional sales tax revenue, Emeryville's overreliance on the retail sector has also created instability: during the Great Recession, the *New York Times* labeled it "The City that Shopped 'til it Dropped."¹⁰

Customer-facing sectors such as retail and food service have also been at the forefront of changing the nature of hourly work, as employers try to minimize their labor costs by 1) keeping large numbers of workers on their payroll, assigning each fewer hours and not paying for benefits, and 2) requiring workers to have open availability for work and utilizing just-in-time scheduling practices to continually alter staffing levels, through posting schedules only a few days before the start of the workweek, making last-minute adjustments to posted schedules, and continuing to change staffing levels in real time throughout the day. Hourly workers in retail and food service—overwhelmingly women and people of color—are most at risk of these unworkable schedules, which can cause profound economic instability and dislocation for themselves and their families.

A national, representative survey of early-career hourly workers found that 64 percent of food service workers and half of retail workers know their schedules a week or less in advance. Food service workers saw wild swings in the numbers of hours they work on a weekly basis, of as much as 68 percent from one week to the next, while retail workers had hours, and paychecks, that changed by as much as 50 percent. Nearly half (44%) of retail workers had no say in making their schedules; four out of ten food service workers reported the same.¹¹

Because of Emeryville's concentration of low-wage hourly jobs in the retail and food-service sectors, Emeryville's workers face greater risk of unstable schedules, involuntary part-time employment, and untenable poverty. Employers' erosion of stable work hours in the retail and food service sector has meant that greater numbers of working people earn poverty incomes. While four percent of households with children where at least one parent has a full-time job live in poverty, the rate jumps to 28 percent for households that have no full-time earners but at least one part-time earner. In Black households, the poverty rates are seven percent for families with at least one full-time earner, compared to 44 percent under a part-time earner. And in Latino families, it comes to nine percent versus 44 percent. Thus, in order for Emeryville's workers to truly have a family-sustaining income, and for advances on the minimum wage to take full effect, the work hours of frontline employees in customer-facing environments like retail and food service must also be stabilized. Yet while Emeryville has acted to protect low-wage workers in its hotel industry by regulating the square footage they can be expected to clean in an eight-hour day,¹² the city has not yet enacted work hour protections for its other low-wage sectors.

Inadequate hours, insufficient incomes

Emeryville's retail and food service employment is dominated by large regional and national chain stores. Of these, the food service outlets often follow a franchise model. Large chain stores and franchises continue to do well and make up an increasing share of the national economy, with a growth rate up 4.4 percent year-over-year in January 2016, compared to two percent for businesses over all.¹³ Corporate headquarters set the contours of workforce management and operations for their local stores nationwide in a top-down process, creating labor budgets and allocating staff hours¹⁴—and, in franchised businesses, dictating other aspects of business operations at their franchised stores¹⁵—making it virtually impossible for local store managers who want to do right by their employees to offer more hours, stable schedules, or better wages.

These large-scale businesses have enough resources to be able to invest in the human capital—the workforce of their companies—but instead elect to keep most workers at part-time with little or no benefits. This business model results in extremely high rates of turnover in both industries (an average of 66 percent for part-time workers in retail in 2014¹⁶ and 94 percent for hourly employees in food service in the same year),¹⁷ creating high replacement costs. Yet retail and fast food companies continue their attempt to minimize labor costs through excessive part-time work and just-in-time scheduling, practices that wreak havoc on workers' lives. As a result of low wages and insufficient hours, employees of these companies often must utilize public assistance in order to make ends meet: in 2014, one out of every three retail workers was on at least one form of public assistance. Retail employers cost taxpayers at least an estimated \$13.4 billion each year, as employers take advantage of the public safety net and keep their labor costs artificially low.¹⁸ At the same time, these companies continue to offer cut-rate Black Friday sales and pay out large dividends to their shareholders or participate in expensive shareholder buyback schemes.¹⁹

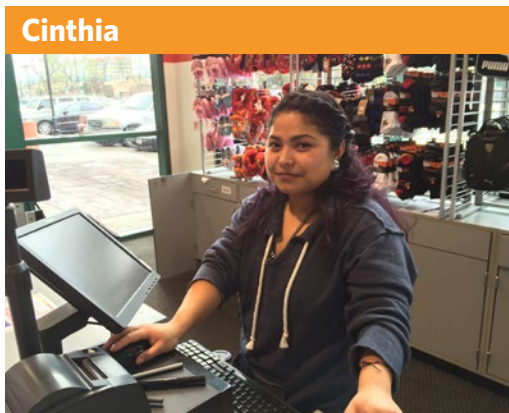
By taking on the harmful scheduling practices that dominate in the low-wage retail and fast-food sectors, Emeryville can not only help working people in their communities, but also serve as the catalyst for better practices across the country, much as Emeryville has led the way in raising the minimum wage nationwide. As companies simplify their rules in order to comply, these healthier practices will then proliferate nationwide and improve the lives of millions of workers.

Workers face harsh scheduling challenges in Emeryville

Over the past seven months, the Alliance for California Community Empowerment surveyed 111 Emeryville workers, with a focus on low-wage retail and fast food workers. Eighty-seven percent (87%) of those surveyed were retail workers and 10 percent were food service workers. As is common in these industries, an overwhelming majority—68 percent—worked in part-time jobs.

Retail and food service jobs are overwhelmingly held by people of color

The majority of respondents identified as women (63%). They were also overwhelmingly people of color (82%), with a plurality of Black or African-American and Latino workers (34% and 29% respectively), and a smaller percentage of Asian and Pacific Islander (19%) and White workers (16%). Seventy-six percent (76%) identified as heterosexual while nearly one-quarter identified as LGBTQ.



Cinthia

I have worked at DB Shoes in the Powell Street Plaza in Emeryville for the last 2 years. When I was initially hired on, I was told I would have a full-time job and therefore I planned my life around it. I bought a car so that I could help care for my younger brother and give him rides to and from school. But I never get full-time hours and lately my schedule has been incredibly unpredictable. Several times a week I'm called in for a last-minute change to the schedule. One time my boss texted me at 1:55pm to come in at 2pm for a shift that was scheduled to start at 3pm. I felt that if I said no, I would have my hours cut. In retail it's like we're disposable. I have responsibilities outside of my job, including school and a family that I support, but we are treated as if the company's profits are more important than our families. My time counts too.

The workers surveyed ranged in age from 17 to 51 years old. A significant number of respondents had family and school responsibilities, factors which often affects their work availability and ability to plan ahead. Thirty-nine percent (39%) reported that they support children or family members on their income. Sixty-two percent (62%) were either in school or stated that they would like to go to school.

With the Emeryville minimum wage ordinance in effect as of July 2, 2015, before the survey period, workers benefited from the \$12.25 an hour minimum wage for small businesses with 55 or fewer employees, and \$14.44 an hour for businesses with greater than 55 employees. Half (50%) of the surveyed workers earned between \$12.25 and \$14.43, and 42 percent earned between \$14.44 an hour to just under \$16.

Two-thirds of workers get their schedule a week or less in advance

Nearly two out of three workers (65%) reported that they generally get their schedule a week or less in advance. This lack of advance notice challenges workers who have competing responsibilities at home, school, or other jobs.

8 out of 10 workers have hours that fluctuate week to week

Workers face frequent schedule changes, and the lack of predictable schedules makes it difficult for workers to plan ahead. Nearly 8 in 10 surveyed workers (79%) reported that the number of hours they work changes each week, with 35 percent “always” experiencing changes in hours every week.

Those who juggle school, work, or family face even more barriers to advancement and economic stability. Two out of three workers (66%) surveyed stated that they are expected to have “open availability” to get more hours or a promotion.

Over two-thirds of workers want to work more hours they are assigned

Most retail and low-wage jobs are part-time, as employers and trends in these sectors have made the 40-hour week and 8-hour day uncommon. Over half of surveyed workers (54%) worked fewer than 30 hours a week. Many low-wage workers want access to more hours and full-time work in order to have more stable employment and reduce the need to cobble together multiple part-time jobs. Over two-thirds (67%) of those surveyed stated that they would prefer to work more hours than they are scheduled for, and nearly two-thirds (65%) wanted to work 30 hours or more per week.

Punishing “clopening” shifts are all too common

Over half of workers (53%) surveyed experienced a back-to-back late night closing and early morning opening shift, known as “clopening,” with less than 11 hours between the two shifts. This contributes to inadequate rest and sleep, which can lead to negative health outcomes (See sidebar, page 10).²⁰ Clopenings create even greater problems when workers face long commutes—45 percent of those surveyed reported they had commutes of between 30 minutes and two hours. While some of those surveyed live in Emeryville, and many others live in the surrounding cities of Oakland, Berkeley, and Richmond, some commute from as far away as Tracy, Brentwood, and Union City—commutes that can take 30 minutes to over an hour depending on traffic and public transit schedules.

Manuel Carmona



I have been working at the Marshalls in Emeryville's Powell Street Plaza for the past 3 and half years. I work hard at my job and do my best as an employee. I need to work around 20 hours a week to help pay my college tuition as well as help pay rent and support my family. But recently my hours have become fewer and less predictable. In the last scheduling period I wasn't scheduled for a single shift. With uneven income and rents increasing so drastically in the East Bay, my family was forced to leave the Fruitvale neighborhood where we have lived our entire lives - despite the fact that all 5 of my parents and siblings work. I budget my finances tightly, but without the hours over the past several months I've accrued thousands in credit card debt in order to make ends meet. And its not just me, I know many retail workers with similar experiences. Having a Fair Work Week in Emeryville would allow me to get the hours that I need in order to pay for college, support my family and have the freedom to live a healthy life where I can plan and control my own time.

Alexis



I was born and raised in the East Bay and have worked at the Starbucks Cafe in Barnes and Noble on and off for nearly 10 years now. As a mother of two, I am barely able to make ends meet because of my unpredictable schedule with low hours—sometimes just 15 hours instead of the 25 I usually have. While I dream of someday living in my own home, I have to live with my sister. Having a Fair Work Week in Emeryville would allow me to get more hours to provide for my family, budget my time and plan my life.

The far-reaching effects of unpredictable and precarious schedules and work hours

Precarious work schedules, unpredictable hours, and lack of full-time hours affect workers' health, family, and ability to climb out of poverty. Surveyed workers reported that unpredictable hours result in them facing financial difficulties (41%); negative impacts on their health, including stress and sleep (27%); difficulties getting a second job (25%); and difficulties going to school (27%). The ripple effects of these practices extend beyond just workers themselves, to their coworkers, children and families, and the community at large.

Public and Occupational Health and the need for a Fair Workweek²¹

Families

Parental stress caused by nonstandard work schedules is linked to children's poorer cognitive, behavioral, and mental health status.²² Erratic hours cause fluctuating weekly incomes, which undermines families' economic security.²³ Inconsistent schedules make it impossible for working families to meaningfully plan for family responsibilities and maintain healthy routines for kids such as regular homework times, bedtimes, and family meals.²⁴

Irregular hours may impede workers' ability to pursue an education so they can advance in their careers. Studies show that learning is impaired in individuals who experience a mismatch between their waking hours and their internal biological clock.²⁵

Workers

Industries and occupations with the highest concentration of low-wage, hourly work, such as retail and food service, also have the largest share of workers scheduled to work non-standard hours.²⁶

Erratic hours can cause sleep deprivation for workers. Long-term sleep deficit leaves workers struggling with sleep deprivation and fatigue, with Black and Asian workers left particularly susceptible.²⁷

These impairments can increase the rate of workplace accidents,²⁸ with highly fatigued workers 70 percent more likely to be involved in a workplace accident than workers not experiencing fatigue.²⁹ Challenging work schedules, compounded by sleep loss, have been tied to poor mental health and increased risk for hypertension, cancer, diabetes, and cardiovascular disease.³⁰

The Public

Sleep deprivation also impairs workers on their commutes.³¹ Driver drowsiness contributes to nearly 20 percent of all serious car crash injuries,³² and studies show that working multiple jobs, working the night shift, and sleeping fewer than five hours are the most common reasons for car crashes where the driver had fallen asleep.³³

The way forward to an equitable workplace

Our economy has changed, and work schedules are changing with it. Retail and fast food are among the economy's most rapidly growing industries. While disproportionately employing women and people of color, employers in these sectors too often force employees to provide 24/7 availability yet offer no hope of full-time hours or an opportunity to advance. New policies are needed to ensure that Emeryville's jobs reflect the values of our community.

Targeted legislation tailored to fit Emeryville's economy and protect low-wage workers from unstable schedules should apply to all hourly workers employed in the retail or quick-service restaurant

sectors who have an employer with 55 or more employees globally. An estimated 4,000 workers in Emeryville are employed in such national retail or fast food chains and would benefit from the following common-sense updates to our labor standards:

Employers should be required to provide employees with **predictable schedules with stable hours and reliable paychecks** make it possible for working people to plan ahead to meet their responsibilities on and off the job.

- **Advance notice of schedules** allows working people to have a schedule they can count on and manage even when their schedule varies from week to week. Although 45 percent of hourly workers currently know their schedules three weeks in advance or more, a startling 41 percent of hourly workers know their schedule less than one week in advance.

Yet technological innovations make it easier than ever for employers to plan work schedules in advance so hourly employees can manage the many demands on their time, work hard, and plan a budget to pay their bills. Three weeks' notice has emerged as a consensus baseline for notice, though far more advance notice is possible: employees at Ikea in the United States receive their schedules three weeks in advance, but in Sweden Ikea workers receive their schedules one year in advance.³⁴

After providing notice to employees, employers could continue to update schedules as necessary, but employees would have the choice to decline any unscheduled hours when they would conflict with other obligations.

- **Predictability pay** compensates employees at one additional hour of pay at their regular rate when accommodating their employer's last-minute scheduling changes. Predictability pay is similar to overtime pay, because it rewards employees who go above and beyond in order to be available on short notice.

Predictability pay also creates an incentive for managers to plan ahead instead of determining work schedules at the last minute.

Ensuring **flexible, responsive work schedules** helps create an invested, more productive workforce. Employees should be able, by law, to set reasonable limitations on their schedules so that they can stay healthy, pursue educational opportunities, and spend time with their families. Employers often require that all employees have "open availability" to work at any hour that the workplace is open, but this policy exists for employer convenience, not out of necessity. We can restore a balance that gives working people some input into their schedules.

- A **right to request specific scheduling accommodations** allows employees to ask *without being unfairly penalized* for schedules that allow them to meet their various obligations. One third of early career workers currently have some input in their schedules, but half have no say at all; many employees report facing retaliation for simply requesting that their employers accommodate their obligations outside of work.³⁵ Although a right to request does not guarantee an employee's request will be granted, it creates a protected space for employees trying to balance responsibilities off the job, such as college classes, an aging parent's doctor's appointments or a parent-teacher conference, without fearing negative consequences.
- **Mutual consent** requires to obtain an employee's agreement before an employer adds hours to the posted schedule. While many employees want extra hours, some employers assign last-minute hours without regard to employees' obligations outside work. This provision allows

employees to make plans based on the posted schedule and protects them from retaliation when they choose to decline hours that conflict with other obligations.

Guaranteeing that every worker has the **right to rest** for at least 11 hours between shifts is crucial to community well-being. The practice of “clopening” (requiring an employee to close late at night and open early the next morning, often with as little as six hours in between to commute and sleep) is dangerous for hourly workers and those who share the road with them.³⁶

- **Right to decline such shifts and to earn premium pay** when an employee agrees to work them gives employers and employees flexibility to take shifts with shorter rest periods if they come to mutual agreement. Workers should have the right to decline work hours that do not allow sufficient rest.

Restoring family-sustaining jobs helps our communities thrive. Millions of Americans want to work more hours to support their families. But many employers in retail and food service prefer to maintain a large part-time workforce where no one gets enough hours to make ends meet. The unpredictable schedules many hourly workers face make it especially difficult to generate a full-time income by holding multiple part-time jobs.

- **Access to hours** requires employers to offer extra shifts to current employees before hiring additional staff. This simple commitment allows employees who want to work more hours to do so at their current job—an arrangement that is more stable for working people, and especially those with family responsibilities—and increases both productivity and retention.

Fair scheduling helps sustain families

Fair scheduling means that moms who are juggling the many pieces of raising a healthy family, adult children caring for aging parents, and students striving for a college degree can work hard and get ahead. Unpredictable schedules, short-notice shift changes, unpaid on-call time and dead-end part-time jobs are outdated scheduling practices that hurt working families and slow our economic recovery. The common-sense scheduling standards outlined above can be implemented without undue expense to employers, while going a long way toward restoring a fair workplace for working people in Emeryville’s retail and fast food chains.

Notes

- 1 State of California, Employment Development Department, "Employers by Industry." Available <http://www.labormarketinfo.edd.ca.gov/aspdotnet/databrowsing/IndSectorAndKeyword.aspx?menuChoice=emp&searchType=Industry>. Accessed February 17, 2016.
- 2 Emeryville Municipal Code § 5-32.1.1(c).
- 3 "Washington, DC Survey Results," Public Policy Polling, October 28-30, 2015.
- 4 For Emeryville's development history, see EBASE and Center for Labor Research and Education, May 2003, "Behind the Boomtown: Growth and Urban Redevelopment in Emeryville."
- 5 EBASE and CLRE, May 2003, p 26.
- 6 Ibid. p 82. Local governments prize sales tax revenue because of limits to property tax revenue established by California's Proposition 13.
- 7 EBASE, "Honoring the Work: Measure C Hotel Living Wage's Impact on Workers in Emeryville." 2010.
- 8 <http://www.eastbayexpress.com/oakland/emeryville-is-finally-rethinking-development/Content?oid=4489269>
- 9 City of Emeryville, "Comprehensive Annual Financial Report, Year Ended June 30, 2015," Schedule XV "Principle Employers, Current Year and Nine Years Ago."
- 10 <http://www.nytimes.com/2008/12/21/business/21emery.html>
- 11 Susan J. Lambert, Peter J. Fugiel, and Julia R. Henly, Precarious Work Schedules among Early Career Employees in the US: A National snapshot, Employment Instability, Family Well-Being, and Social Policy Network (University of Chicago), August 24, 2014, http://ssascholars.uchicago.edu/work-scheduling-study/files/lambert.fugiel.henly._precarious_work_schedules.august2014.pdf.
- 12 Emeryville Municipal Code § 5-32.1.1(c).
- 13 ADP, "ADP National Franchise Report," January 2016. Available http://www.adpemploymentreport.com/2016/January/NFR/docs/ADP_January2016_NFR_Press_Release.pdf. Accessed February 17, 2016.
- 14 Kronos, "Retail Workforce Management: Achieving Competitive Advantage in a Difficult Economy," (white paper) page 5. 2009. Available http://www.kronos.com/ads/demand/18/kronos_demand_ad.pdf. Accessed February 17, 2016.
- 15 Alejandra Cancino, "SEIU seeks federal investigation of franchise industry." *The Chicago Tribune*, May 18. 2015. Available <http://www.chicagotribune.com/business/ctfightfor15ftc0519biz20150518story>. HTML. Accessed February 17, 2016.
- 16 Lauren Weber, "One Reason Wal-Mart Is Raising Pay: Turnover." *The Wall Street Journal*, February 19, 2015. Available <http://blogs.wsj.com/atwork/2015/02/19/one-reason-wal-mart-is-raising-pay-turnover/>. Accessed February 17, 2016.
- 17 Jim Sullivan, "Best Practices in Restaurant Employee Retention," *National Restaurant News*, April 27, 2015. Available <http://nrm.com/sullivision/best-practices-restaurant-employee-retention>. Accessed February 17, 2016.
- 18 David Cooper, "Amazing Black Friday Deals, Brought to You By The American Taxpayer" (blog post). Economic Policy Institute, November 21, 2014. Available <http://www.epi.org/blog/amazing-black-friday-deals-brought-to-you-by-the-american-taxpayer/>. Accessed February 18, 2016.
- 19 See, for example, Jim Woods, "Home Depot Heads 15 Dividend Stocks Increasing Payouts." *InvestorPlace*, February 27, 2015. Available http://investorplace.com/2015/02/home-depot-heads-15-dividend-stocks-increasing-payouts/#.VsXm2_krlgs. Accessed February 18, 2016; New York State Fast Food Wage Board, "Report of the Fast Food Wage Board to the NYS Commission of Labor," July 31, 2015. Available <http://labor.ny.gov/workerprotection/laborstandards/pdfs/Fast-Food-Wage-Board-Report.pdf>. Accessed February 17, 2016.
- 20 CPD, "A Fair Workweek- A Public Health Imperative for Working Families."
- 21 Excerpted from CPD, "A Fair Workweek- A Public Health Imperative for Working Families."
- 22 Pamela Joshi and Karen Bogen, "Nonstandard Schedules and Young Children's Behavioral Outcomes Among Working Low-Income Families," *Journal of Marriage and Family* 69 (February 2007) 139-156.
- 23 Alexander, Charlotte and Haley-Lock, Anna and Ruan, Nantiya, Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability, Harvard Civil Rights- Civil Liberties Law Review (CR-CL), Forthcoming; U Denver Legal Studies Research Paper No. 13-43. <http://ssrn.com/abstract=2327903> (March 25,

- 24 Center for Law and Social Policy, Retail Action Project, and Women Employed, "Tackling Unstable and Unpredictable Work Schedules: a Policy Brief on Guaranteed Minimum Hours and Reporting Pay Policies," March 2014, *Center for Law and Social Policy, Retail Action Project, and Women Employed*, <http://retailactionproject.org/wp-content/uploads/2014/03/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL.pdf>
- 25 A. Gupta, S. Sando, S. Parthasarathy, S. Quan, "Information Technology Conduit as a Portal to Circumvent the Graveyard Shift," *Journal of Clinical Sleep Medicine*, ; 6(2): April 2010, 113-116.
- 26 National Institutes of Health, United States Department of Health and Human Services, "Your Guide to Healthy Sleep," *National Institutes of Health*, August 2011, https://www.nhlbi.nih.gov/files/docs/public/sleep/healthy_sleep.pdf
- 27 Sara E. Luckhaupt, Short Sleep Duration Among Workers — United States, 2010, *Morbidity and Mortality Weekly Report* 61(16): 281-285, April 2012, Centers for Disease Control and Prevention, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6116a2.htm>
- 28 Harvey Colton and Bruce Altevogt, ed., *Sleep Disorders and Sleep Deprivation: An Unmet Public Health Problem*. National Academy of Sciences, Washington, 2006, 168.
- 29 D. Leger, C. Guilleminault, G. Bader, E. Levy, M. Paillard, "Medical and socio-professional impact of insomnia," *Sleep: Journal of Sleep & Sleep Disorders Research* 25(6), 2002, 621-625.
- 30 American Psychological Association, "Work Stress and Health and Socio-Economic Status," <http://www.apa.org/pi/ses/resources/publications/factsheet-wsh.pdf>; American Psychological Association, "How Stress Effects Your Health," <http://www.apa.org/helpcenter/stress.aspx> (2013).
- 31 US Department of Transportation, National Highway Traffic Safety Administration, National Center on Sleep Disorders Research, National Heart Lung and Blood Institute, "Drowsy driving and automobile crashes," *National Highway Traffic Safety Administration*, http://www.nhtsa.gov/people/injury/drowsy_driving1/Drowsy.html#NCSDR/NHTSA
- 32 J. Connor J., R. Norton, S. Ameratunga, E. Robinson, I. Civil, R. Dunn, J. Bailey, R. Jackson, "Driver sleepiness and risk of serious injury to car occupants: population-based case control study." *British Medical Journal*, May 2002, 324(7346):1125.
- 33 Harvey Colton and Bruce Altevogt, ed., *Sleep Disorders and Sleep Deprivation: An Unmet Public Health Problem*. National Academy of Sciences, Washington, 2006, 179.
- 34 Derek Dutch, "Fair Scheduling is About Respect," *The Baltimore Sun*, March 23, 2015, <http://www.baltimoresun.com/news/opinion/oped/bs-ed-worker-schedules-20150323-story.html>
- 35 Lambert et al., "Precarious Work Schedules among Early-Career Employees in the US: A National Snapshot."
- 36 "A Fair Workweek—A Public Health Imperative for Working Families," *The Center for Popular Democracy - Fair Workweek Initiative*, April 2015.



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