



May 6, 2020

The Honorable Jerry Hill
 Chair, Senate Committee on Labor, Public Employment and Retirement
 Legislative Office Building
 1020 N Street, Room 545
 Sacramento, CA 95814

Re: SB 850 (Leyva): Work hours: scheduling – OPPOSE

Dear Senator Hill:

On behalf of the above business organizations in the Inland Empire, we write in opposition to SB 850, which would require an employer to provide modification pay to workers when it changes an employee’s schedule passed a certain date, and open the employer to civil action under the Private Attorney Generals Act (PAGA) for noncompliance. While we are supportive to the underlying goal of providing greater notice for employees, this bill’s provisions would ultimately hurt employers and employees.

Requires employers to set schedules almost a month ahead of time. SB 850 requires all employers who sell food or merchandise to basically provide a 28-day notice of an employee’s schedule. Specifically, SB 850 requires a 21-day work schedule that must be given to an employee no fewer than 7 days in advance before the first shift. First, this mandate fails to take into consideration the varying business models for employers who sell food or merchandise. While some may have

predictability in their business cycle and, therefore, have the ability to provide such extensive notice, others simply cannot predict their staffing needs so far in advance.

Second, this mandate will force an employee to predict their own schedule more than 30 days in advance in order to provide their availability to an employer so the employer can create a schedule more than 28 days in the future. As employers have experienced in San Francisco with the local ordinance that mandates a 14-day notice schedule, many employees simply cannot commit to shifts so far in advance and end up frustrated with the schedule they receive that the employer cannot or will not change due to the threat of financial penalties.

The COVID-19 pandemic has shut down many businesses in order to limit the disease's spread. While businesses will be able to open one day, it is unknown how much many customers will return. Employers will need the flexibility to schedule to meet the demand, which will be unpredictable for a foreseeable period of time.

The threat of modification pay and numerous penalties for schedule changes will eliminate flexibility in the workplace. SB 850 requires employers to provide "modification pay" for changes made to an employee's schedule with fewer than 7-days' notice. Although SB 850 provides several exemptions as to when "modification pay" applies, employers will nevertheless be wary to make any changes to an employee's schedule in order to avoid the potential of having to pay "modification pay."

This is especially true with regard to the numerous threats of investigation and litigation authorized by this bill. SB 850 threatens an employer for failure to properly provide "modification pay" with the following: (1) a \$4,000 penalty for failing to accurately provide "modification pay"; (2) another \$4,000 penalty for any harm that results to the employee or "another person" from a violation of this law; (3) a \$50 per day penalty for failure to "promptly comply" with the Labor Commissioner's order; (4) investigation by the Labor Commissioner; (5) prosecution by the Attorney General; (6) a representative action by an employee under Labor Code Sections 2698, *et seq.*, with penalties of \$100 per employee per pay period and attorney's fees; and (7) an unfair competition claim under Business and Professions Code Sections 17200, *et seq.*

With all of these potential risky consequences, an employer covered by SB 850 will never change an employee's schedule, even if it appears the change falls within one of the listed exceptions or the employee actually volunteers and requests the change/additional hours of work. The risk to the employer for a mistake is simply too great.

SB 850 Creates Numerous, Costly Avenues of Litigation: The PAGA, creates a representative action for any aggrieved employee to bring for any Labor Code violation, including statutory penalties and employee-only attorney's fees. As the Governor's budget estimates, the Labor and Workforce Development Agency receives over 600 PAGA notices per month, which demonstrates the volume of PAGA lawsuits that are plaguing employers in California today. SB 850 would add to this growing problem, as any violation of SB 850 would subject an employer to the threat of PAGA litigation. Even if the employer pays the employee "modification pay" for changes to the employees' schedule, the employer could still be subject to significant penalties and attorney's fees for PAGA litigation.

SB 850 Is Applicable to Both Large and Small Employers. SB 850 applies to any restaurant, grocery store or retail store establishment, regardless of size. The scope of this bill is daunting and the likely burden it will impose is overwhelming. Even the San Francisco Ordinance that applies to larger employers, who have more sophisticated scheduling software and technology, has created significant challenges with regard to advance scheduling and accommodating schedule changes. A small employer with limited resources will not be able to manage the 21-day “work schedule” that must be given to employees at least 7 days in advance of their first shift, or the nuances with regard to when “modification pay” applies.

For the reasons stated above and others, we urge you to oppose SB 850. If you have any questions or would like to discuss our position in greater detail, please contact Luis Portillo at 909-944-2201 or by email at lportillo@ieep.com. Thank you.

Sincerely,

Janice Moore
Apple Valley Chamber of
Commerce

Bette Rader
Beaumont Chamber of
Commerce

Zeb Welborn
Chino Valley Chamber of
Commerce

Bobby Spiegel
Corona Chamber of
Commerce

Gloria Martinez
Fontana Chamber of
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Joshua Bonner
Greater Coachella Valley
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Peggi Hazlett
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Dori Jared-Ferranto
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Mark Creffield
Victor Valley Chamber of
Commerce

cc: Senator Connie Leyva