



# Seattle City Council

## Central Staff - Memorandum

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**Date:** June 16, 2016  
**To:** CRUEDA Committee meeting  
**From:** Patricia Lee, Council Central Staff

**Subject:** June 21 CRUEDA Committee Meeting on Secured Scheduling  
Memo #8 (pages 10 & 11)

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Memo Format. Since the CRUEDA Committee will be discussing the issue of Secure Scheduling for the next several months I have been asked to add new sections onto an existing memo rather than submit a new memo for each meeting. This way Councilmembers can have all the topics and suggested questions in one place. Therefore, I have compiled the relevant sections of previous memos into this memo.

The memo for each committee meeting will look the same and the new material will be at the end of the memo. In the Subject Header I will identify the Committee meeting date and the Memo with a number. While this will be a compilation of topics and suggested areas of inquiry it will not be minutes of the committee discussion. All committees are taped and that serves as the public record of the discussion.

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### Secured Scheduling

Councilmembers have heard from workers in Seattle who are having difficulty maintaining their economic stability, being able to manage child care and family responsibilities or further their skills by attending school due to unpredictable and fluctuating work schedules.

These concerns are not unique to Seattle. At the March 8, 2016 CRUEDA Committee meeting, Professor Susan Lambert from the University of Chicago presented information on work she and her colleagues Peter Fugiel and Julia Henly have done on scheduling practices. Their work drew on national data from the National Longitudinal Survey of Youth. Respondents in the survey were 26 to 32 years old. They found three practices which led to precarious work schedules were widespread;

- short advance notice,
- large fluctuations in work hours and
- little or no input into the timing of work

These practices were experienced by early career workers across the labor market but especially by hourly, part-time workers and workers of color.

Councilmembers have also heard from businesses about their need to have flexibility in scheduling in order to meet their customer and business needs and deliver their product in a

timely manner. Businesses also want the ability to respond to workers' request to change their schedule.

### Process

The CRUEDA Committee will spend the next several months exploring these issues and developing potential options. This will be a multi-faceted process as the Mayor's office is also meeting with workers and stakeholders from the business and labor community to discuss and understand these issues. So that the two processes inform each other CM Herbold has requested participants from those meetings attend the CRUEDA Committee meeting and report on the discussions they are having. Below are the topics and the order the Mayor's office has indicated they will be discussed in their meetings:

1. Employer coverage
2. Advance Notice of Schedules
3. Predictability Pay
4. Right to Request
5. Right to Rest
6. Access to Hours
7. Part-time Parity
8. Job Security with Successor Employers
9. Additional Requirements
10. Enforcement
11. Exceptions

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### **March 8, 2016 CRUEDA Committee Meeting 1**

Presentation by Associate Professor Susan Lambert from the University of Chicago and Professor Charlotte Garden at Seattle University.

Questions presenters were asked to answer:

1. How prevalent is the problem, and is it more prevalent in certain sectors?
2. Why is this happening - what are the economic forces, and/or changes in the national/global/local economies that are leading to the creation of more part-time workers, independent contractors, and employers trying to maximize every worker hour?
3. What are the legislative remedies that have been tried in other jurisdictions and how successful have they been?
4. What are the components you see as necessary to effective legislation that would address this?
5. What are the unintended consequences or pitfalls to certain legislative remedies that we should be aware of and avoid?

## **March 22 CRUEDA Committee Meeting 2**

### **Areas of Inquiry**

At the March 22, meeting participants in the Mayor’s meetings will report on their discussions on March 16 and 17. The business owners mainly discussed the first item – which businesses might be covered if there was a legislative proposal and labor discussed the first three items.

Employer Coverage: Many labor laws have different requirements based on the size of the business or number of workers. Some labor laws apply to only some types of businesses. Below are some questions Council may want to ask both workers and businesses to get a better understanding of whether there are different experiences in different types of businesses that would warrant such a differentiation if a legislative option were considered.

- a. What are the scheduling practices and challenges in Seattle?
- b. Is scheduling unpredictability prevalent in Seattle?
- c. Are scheduling challenges and practices different in different industries e.g. retail, restaurants, janitors, if so how?
- d. Is scheduling unpredictability more prevalent in some types of businesses?
- e. Are there industry “norms” for staffing and if so what are they?
- f. Are scheduling practices different in independent business compared to “chain” businesses, e.g. do “chain” businesses have autonomy of staffing ratios
- g. Are scheduling challenges and practices different depending on the size of a business, if so how?
- h. Are there Seattle businesses that have developed and implemented scheduling practices that are good models that should be replicated and how would those models work in different industries?

Presenters: Sejal Parikh, Working Washington; Alex Il, UFCW 21; David Jones, Blazing Onion; Pamela Hinckley, Seatown Restaurants; Bob Donovan, Donovan Employment Law; Carolyn Logue, CA Logue Public Affairs; Patricia Lee, Council Central Staff

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## **April 12 CRUEDA Committee Meeting 3**

### **Areas of Inquiry**

Employer Coverage (continuation of discussion and additional questions)

- A. Are scheduling practices different in independent businesses compared to “chain” businesses, e.g. do “chain” businesses have autonomy of staffing ratios
- B. Are scheduling challenges and practices different depending on the size of a business, if so how?

- C. Are there Seattle businesses that have developed and implemented scheduling practices that are good models that should be replicated and how would those models work in different industries?

Advance Notice:

- D. How are schedules developed and who makes the decision?  
E. In what form is notice given? (electronic, written)  
F. How long is the schedule usually for?  
G. How much time is there between an worker receiving a schedule and the first scheduled shift?  
H. Does the amount of advance scheduling differ by industry, size of business, whether they are independently owned?  
I. Are on-call shifts scheduled in advance?  
J. When workers are hired are they told how many hours, what hours and when they will be working i.e. are workers hired for particular shifts or told their hours will fluctuate.

Predictability Pay:

- K. How often are changes made to an individual worker's schedule in a month, two months? And at whose initiative?  
L. What business factors drive schedule changes, particularly last minute ones?  
M. How do businesses address schedule changes.

Presenters: Sarah Cherin, UFCW 21; Rachel Dehn, ROC; Devony Boyle, Tom Douglas Restaurants; Pamela Hinckley, Seatown Restaurants; Carolyn Logue, CA Logue Public Affairs; Patricia Lee, Council Central Staff

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**April 26 CRUEDA Committee Meeting 4**  
**Areas of Inquiry**

Predictability Pay: (continuation of discussion)

- A. How often are changes made to an individual worker's schedule in a month, two months? And at whose initiative?  
B. What business factors drive schedule changes, particularly last minute ones?  
C. How do businesses address schedule changes.  
D. Phasing – how do businesses respond when less staff are needed than predicted and scheduled e.g. weather closes an outdoor seating area.

Right to Rest –  
Split Shifts

- What businesses regularly schedule split shifts?
- Is this more common in certain industries?

- Does the size of businesses change the practice of split shifts?
- For businesses with split shifts – what is the amount of time between shifts?
- Are the intervals between regularly scheduled or do they vary

#### Time between shifts (not split shifts)

- What is the business practice regarding time between scheduled shifts, e.g. is it a businesses practice not to schedule a worker with less than X number of hours between shifts?
  - If so what is that interval? Note: some businesses are open 24 hours a day – they may not have workers close and open a business but workers could be scheduled for shifts close in time.
  - Does the practice vary by industry – if so how?
  - Does the practice vary by size of business – if so how?
  - Does the practice vary in “chain” businesses compared to independently owned businesses?
  - Is there a minimum number of hours workers are scheduled for, and if so why?
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### **May 11 CRUEDA Committee Meeting**

#### **Right to Request**

##### A. Before the schedule is finalized

- What is the current practice of worker input into the creation of their work schedule?
- Does it differ by type or size of industry?

##### B. After the schedule is finalized

- What is the process for worker requested schedule changes that result from an ongoing change in their availability to work - how do they make that change and is there a required time in advance that they must request it?
- What is the process for workers to request a change to a particular shift e.g. worker must arrange a swap, does the manager arrange the change?
- Does the process differ depending on how close it is to the scheduled shift?
- Are there any consequences if an worker requests a change? Does it matter how often an worker makes a request or how close it is to their scheduled shift? Please explain what some of the consequences might be.

#### **Right to Rest and Split Shifts (Cont'd)**

### Split Shifts

(Note: these questions were also on the list for the April 26 meeting but weren't fully discussed.)

- What businesses regularly schedule split shifts?
- Is this more common in certain industries?
- Does the size of businesses change the practice of split shifts?
- For businesses with split shifts – what is the amount of time between shifts?
- Are the intervals between regularly scheduled or do they vary
- If there was a requirement that shifts be a certain number of hours apart, how would that work for businesses that regularly have split shifts?
- Should each portion of a split shift be treated separately for determining if there has been a change from the scheduled hours, not just the total shift hours?
- How does Phasing affect split shifts i.e. are a worker's hours on the second half of a split shift change if the hours on the first part of the split shift are extended or reduced?

### Predictability Pay

(Note: Predictability Pay has been discussed before, however, the CRUEDA committee meetings are a report on what was discussed in the stakeholder meetings and this topic is listed for their May 5 and 6 meetings.

- After a schedule has been completed and posted, what do businesses do if they need to fill hours - either the need for additional staff or to cover for a worker who can't work their hours e.g. having a pool of on call workers, having additional staff per shift?

If workers have to be called in for unscheduled hours, what is that process?

- Should workers be compensated for changes in their working hours after the schedule has been posted?
- Does the willingness of the worker to work the unscheduled hours affect this i.e. required v. requested.
- Does the amount of time between a worker being asked to work unscheduled hours and the time of those hours affect whether and how much a worker should be compensated for the change? If yes, how?

On-Call: For businesses that have on-call workers – how does that work?

- Are workers paid for those on-call hours – at the same wages?

### **May 24 CRUEDA Committee Meeting**

The business and worker advocate stakeholder meetings are continuing and a report out will be provided at the June 3 CRUEDA meeting.

Today's meeting will be a presentation from Rachel Deutsch from the Center for Popular Democracy and Seema Patel from the San Francisco Office for Labor Standards Enforcement.

Rachel Deutsch is a senior staff attorney with the Center for Popular Democracy (CPD). Before joining CPD, Rachel litigated cases involving labor and employment, elections, state and local governments, and insurance regulation at Strumwasser & Woocher, a public interest law firm.

Ms. Deutsch will speak to the work CPD has done to address the challenges faced by workers, particularly part-time workers in today's economy so I will not repeat what is in her powerpoint. A couple of questions Council may want to ask are:

1. In developing CPD's model policy what were the main challenges you sought to address?
2. As CPD was considering policy options, how did you involve or receive feedback from businesses and business managers?
3. Predictability pay is in many ways the most complex piece – can you explain the thinking between when one hour and when four hours of compensation would be provided. Were there other ways of approaching predictability pay you considered and rejected?
4. Businesses have expressed concern that they would be required to pay predictability pay when another worker caused the schedule change and it was therefore a circumstance beyond their control. Can you speak to why that is not an exception in the model policy.
5. Did CDP work with SF on their Formula Retail Employee Rights Ordinances. Can you speak to the areas where the SF ordinances differ from the model policy.
6. You noted several jurisdictions are currently discussing similar legislation, could you provide any further information on those discussions – where are they in the legislative process?
7. You noted several jurisdictions have reporting pay, what triggers reporting pay and how was that concept incorporated into the model policy

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Seema Patel is the Deputy Director of the San Francisco Office of Labor Standards Enforcement. Ms. Patel directed the rulemaking process for, and now oversees the implementation and enforcement of, the SF Formula Retail Employee Rights Ordinances (Retail Worker Bill of Rights).

Ms. Patel will provide information on both the OLSE and the SF ordinances.

A couple of questions council may want to ask are:

1. Was OLSE involved in the development or drafting of the SF ordinances?
  2. Please explain your rulemaking process and who was involved.
  3. What are the outreach and education strategies OLSE is using to inform businesses and workers of the new ordinances? Was OLSE provided additional staffing?
  4. Now that the rules have been adopted and these ordinances are in effect what kinds of questions, inquiries, concerns are you hearing?
  5. Are they coming from workers, employers or both? From particular types of businesses?
  6. Does OLSE track these inquiries?
  7. Can you walk us through the process OLSE uses when an inquiry or complaint of a potential violation comes to OLSE.
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### **June 3 CRUEDA Committee Meeting**

The stakeholder meetings with business and worker advocates were held on May 16, 18, 31 and June 1. The following topics were discussed: Access to Hours, Predictability Pay and Exceptions to Predictability Pay. At the June 3, CRUEDA Committee meeting representatives from those groups will report out on the discussions they had.

### **Areas of Inquiry**

#### **Access to Hours**

The term “access to hours” refers to whether employers should offer any additional hours that become available to current part-time workers before they hire additional workers. They discussed:

- Their current practices for hiring for additional hours and/or shifts
- The place and length of time for posting the availability of additional hours
- Their criteria for hiring and process for hiring including could they hire while the hours were still posted
- Are there minimum number of hours that employers hire for?
- Business practices around cross training workers to do multiple jobs
- Retention premium

#### **Questions Councilmembers may want to ask:**

- If a worker wants more hours what is the process or procedure for letting management know?
- Are there reasons a business would not want to provide more hours to existing workers before hiring additional workers?
- What are the advantages and disadvantages to a business from having fewer workers with more hours or many workers with fewer hours



- Do business have the same work performance expectations of part-time workers as full time workers?
- Are part-time workers provided the same salary and benefits and training opportunities as full-time workers?

### **Predictability Pay and Exceptions**

Predictability Pay refers to compensation for schedule changes after the schedule is posted.

The stakeholder groups discussed,

- Under what circumstances should a worker be compensated if their scheduled work hours change? What if the schedule change happens because another worker requested a change?
- Should shift swaps between workers be an exception?
- How much can a manager be involved in a shift swap between workers before it is no longer a worker to worker transaction?
- Exceptions for when a business can't operate for example a natural disaster or a public utilities failure.

### **Questions Councilmembers may want to ask:**

One of the underlying features of predictability pay is to allow workers to know and rely on their schedules and concomitant income, and to compensate them if those scheduled hours change.

- Does it matter if hours are added or reduced, if the change is voluntary or involuntary?
- Does it matter whether the change was caused by the business' need or because of another employee's requested schedule change?
- How would you distinguish between a worker voluntarily or involuntarily agreeing to a schedule change?
- Should there be a documentation that a worker voluntarily agreed to work additional hours in the event there was a question later?
- What happens if workers want to swap shifts?
- How would you distinguish between when it is truly a swap shift and when it is a manager decision to request a worker to come in to work?
- Are there other circumstances that would be exceptions?

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## June 21 CRUEDA Committee Meeting

The Hatamiya Group headquartered in Davis, California was retained by the California Retailers Association to look at the impacts of San Francisco's Predictive Scheduling and Fair Treatment for Formula Retail Employees ordinance. They surveyed employees and employers in San Francisco in December 2015 and issued their report, *A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment for Formula Retail Employees Ordinance, subtitled Difficult Challenges for both Employees and Employers in Implementation* in December 2015.

The Hatamiya Group is an economic, strategic and business advisory consulting firm for corporate, legal, government and non-profit leaders. Lon Hatamiya is the President and CEO and specializes in international, national and regional economic analysis, litigation support, political economy, international business transactions, banking, government, transportation, entertainment and sports and public infrastructure financing. Mr. Hatamiya has also served as Secretary of the California Technology, Trade and Commerce Agency, served as Administrator of Foreign Agricultural Service of the United States Department of Agriculture, practiced law and taught at the University of California at Davis.

Mr. Hatamiya currently serves on the Advisory Boards of U.S. Bank, and the Central Valley Fund.

Below are some questions Councilmembers may want to ask

1. Please explain your survey methodology, for example, how many participants were in the study, the demographics of the participants, how participants were identified, and how long it took to conduct the study.
2. Your study was done in December 2015. As we understand it that was after the ordinance was passed in July 2015 but before the Rules went into effect in 2016. Was the ordinance in effect in December 2015?
3. Did you have the opportunity to work with the San Francisco Office of Labor Standards Enforcement as you were developing your report?
4. Have you done any follow up work or additional work since your report in December 2015?
5. Secured Scheduling legislation is being discussed in several jurisdictions around the country. Have you done studies in other jurisdictions?
6. As we read your conclusions you agree that there is a need for greater predictability in worker's schedules, but don't agree with the provisions in San Francisco's ordinance and suggest it does not achieve the appropriate balance between scheduling flexibility and predictability. Do you have specific suggestions on how it could be done differently?

7. Is there anything else you would like to address?

Seema Patel is the Deputy Director of the San Francisco Office of Labor Standards Enforcement. Ms. Patel directed the rulemaking process for, and now oversees the implementation and enforcement of, the SF Formula Retail Employee Rights Ordinances (Retail Worker Bill of Rights).

At the May 24 CRUEDA Seema Patel explained the ordinance. She is also available at this committee meeting if Councilmembers would like her to clarify any aspects of the ordinance, rules or the inquiries employers and employees have made to OLSE.