



May 25, 2021

Hon. Betty Yee
Office of the State Controller
Sacramento, CA 95814

Re: Assembly Bill 1192 (Kalra)

Dear Controller Yee:

Thank you for taking the opportunity to speak with us recently regarding your Assembly Bill 1192. We appreciate your consideration of our comments on this legislation.

Retailers believe employees are our most valuable resource. We take pride in the hiring, training, and promoting of a diverse, upwardly mobile workforce. As you heard from our members, retail employment offers the opportunity to move up into supervisory, store management, and executive roles. Retail company management is replete with individuals who began their careers at the cash register, on the sales floor, or in the store backroom. Many retailers offer job training, education assistance, and other programs to promote retail team members into higher-paying positions and management.

While we appreciate the intent of this measure to identify and encourage “high road” employers, we have a number of concerns with the approach AB 1192 takes in doing so. Chiefly, we remain concerned about the publication of company data as outlined in the bill’s “metrics”, which provided out of proper context will create a hunting ground for baseless litigation by plaintiff’s attorneys. While we appreciate your expressed desire to avoid such pitfalls by refining your bill, we would first note that this bill currently ignores numerous important factors within industries such as retail, including but not limited to:

- Geographic distribution of stores across regions with different cost of living
- Available local labor force and local labor market conditions
- Different business models within the retail world (warehouse, boutique, big box, etc.), different customer service models, varying distributions of certain job classifications across the company, and other factors
- Retail industry sectors (grocery, electronics, designer clothing, general merchandise, hardware, etc.)
- Governance (i.e., are these employment conditions subject to collective bargaining?)
- Employee opinion/input

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This bill also involves the reporting of substantial data which our companies do not currently collect, including:

- Percentage of full-time workers earning above the U.S. living wage
- Median weekly hours for full- and part-time workers
- Median volatility in weekly hours
- Ratio of median pay for the ethnic/gender intersectional subgroups outlined in the bill, which is different than what is currently required to be reported to the federal EEOC.

To be clear, we view the implications of this bill as far greater than the tax benefits or contract preferences that might be awarded an as-yet-to-be-defined “high road employer”. As a broad mandate, the bill is intended to invite comparisons and lead to judgements of the ethical or moral character of all employers subject to the bill’s requirements.

Moreover, it would seem unlikely that a perfect model can be constructed that truly accounts for all variables within our industry and others and assigns proper weighting to each. Despite the focus on data, at a certain level this bill involves inherently subjective judgements based on the values of those constructing the model – or perhaps in the future, amending it.

We would therefore request that in considering our comments, you reconsider moving this bill this year. We are open to further conversation with you about an incentive program focusing on voluntary rather than compulsory publication and metrics.

Thank you for your willingness to engage us in this conversation and for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve McCarthy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve McCarthy
Vice President, Public Policy