

San Francisco Enacts Retail Workers Bill of Rights

DECEMBER 10, 2014

On December 5, 2014, San Francisco enacted two Ordinances, collectively referred to as the Retail Workers Bill of Rights. The Hours and Retention Protections for Formula Retail Employees Ordinance (Ordinance No. 236-14) and the Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance (Ordinance No. 241-14) are together intended to provide greater protection to employees of large national chain establishments, including by requiring greater predictability with work schedules, by creating special protections for part-time employees, and by ensuring job continuity in the event of a change in control. The Ordinances will become operative on July 3, 2015. It is believed that that collectively these Ordinances will impact approximately 40,000 San Francisco employees.

Covered Employers

The Ordinances apply to “formula retail establishments,” which are defined as businesses that have at least 20 retail sales establishments worldwide and employ at least 20 people in San Francisco. Included in the definition of “formula retail establishments” are retail stores, restaurants and bars, banks and credit unions, and movie theaters.

Summary of Requirements

The primary requirements of the Retail Workers Bill of Rights fall into three general categories: (1) more predictable work scheduling; (2) special protections for part-time employees; and (3) job continuity in the event of a change in control.

1. Work Schedule Predictability

The provisions regarding work schedule predictability require covered employers to:

- Provide new employees with an initial, non-binding, written estimate of the minimum number of shifts the employee will work each month, along with the days and hours of those shifts;
- Consider requests made by employees prior to the start of employment to modify the initial estimate;

- Provide employees with at least two weeks' notice of their work schedules, including on-call shifts;
- Provide notice of any unrequested changes to an employee's schedule either in person, by telephone, or by electronic communication;
- Compensate employees for shifts that the employer cancels or moves and for each previously unscheduled shift that the employer requires employees to work – compensation is calculated in addition to the employee's regular pay and ranges between one to four hours of pay at the employee's regular rate, depending on when the employee is notified and the length of the employee's shift; and
- Compensate employees for on-call shifts for which employees are required to be available but are not called in.

2. Provisions for Part-Time Employees

The provisions pertaining to part-time employees require covered employers to:

- Offer additional work to existing part-time employees before hiring new employees or using contractors, temporary services, or staffing agencies, where part-time employees are qualified and where the work is the same or similar to the work the part-time employees have performed for the employer;
- Pay part-time workers the same starting hourly wage as full-time workers for jobs that require equal skill, effort, and responsibility, and that are performed under similar working conditions;
- Provide paid and unpaid time off on an equal basis (based on the number of hours worked) to part-time and full-time employees of the same job classification; and
- Provide part-time workers with the same eligibility for promotions as full-time workers – employers may, however, condition eligibility on an employee's availability to work full time and other reasons unrelated to an employee's part-time status.

3. Employee Retention Requirement

Upon the change in control of a formula retail establishment, successor employers are required to offer to retain existing employees under the same terms of employment for a period of 90 days. Retained employees must be offered the same job classification, compensation, and number of work hours during the 90-day transition period.

Where a successor employer determines that it requires fewer employees than were employed by its predecessor, the employer must retain employees by seniority or in accordance with any applicable collective bargaining agreements. During the 90-day transition period, however, existing employees may only be fired for cause.

These provisions specifically do not apply to “managerial, supervisory, or confidential employee[s]”.

Additional Requirements

Covered employers are required to post a notice of these Ordinances at each of the employer's locations within San Francisco.

The Ordinances subject employers to various other notice and record-keeping requirements.

Importantly, the Ordinances prohibit covered employers from retaliating against employees for exercising or attempting to exercise their rights under the Ordinances.

Enforcement of the Retail Workers Bill of Rights

Failure to comply with the Ordinances may lead to significant penalties. San Francisco's Office of Labor Standards Enforcement (OLSE) is authorized to investigate and enforce the Ordinances.

In the case of a violation of the Hours and Retention Protections for Formula Retail Employees Ordinance, the OLSE may order any appropriate relief, including requiring an employer to offer additional hours to part-time employees, reinstatement, payment of lost wages, the payment of an additional administrative penalty not in excess of the amount of lost wages, and San Francisco's enforcement costs. The OLSE may further impose an administrative fine of up to \$500 per eligible employee employed by the employer for certain violations of the Ordinance.

If the OLSE determines that an employer has violated the Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance, it may order any appropriate relief, including requiring employers to pay lost wages and an administrative penalty of \$50 per violation. Violating employers may also be ordered to pay San Francisco's enforcement costs.

Under either Ordinance, the City Attorney may also bring a civil action in court against an employer seeking lost wages, a civil penalty not to exceed the amount awarded for lost wages, reinstatement in employment and/or injunctive relief, and attorney's fees and costs. Neither Ordinance provides a private right of action.

Related Legislation

San Francisco is the only city to date that has adopted such broad-ranging workers' rights legislation; however, other cities and states may soon follow a similar path. Milwaukee, Wisconsin; Santa Clara, California; and New York are among the cities considering legislation related to employee scheduling. The District of Columbia, Delaware, Michigan, Minnesota, and New York are also considering legislation.

Proposed federal legislation, the [Schedules that Work Act](#) (H.R. 5159), outlines policies similar to those of San Francisco's Retail Workers Bill of Rights, but is unlikely to become law in the foreseeable future.

Covered employers with operations in San Francisco should ensure compliance and assess with counsel the requirements of the new Ordinances prior to their operative date of July 3, 2015. Contact any of the Winston & Strawn Labor and Employment Department Attorneys listed below or your usual Winston & Strawn LLP contact with any questions.

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