

San Francisco's New Restrictions on Formula Retail Employers

On December 5, San Francisco enacted two separate ordinances, together referred to as the “Retail Workers Bill of Rights.” The ordinances put new hiring, work allocation, scheduling, and pay restrictions on “formula retail” businesses — such as chain stores, restaurants, banks, and other service providers — that have 20 or more locations worldwide and at least 20 employees in San Francisco. The restrictions will become operative next summer. Employers should review their employment policies and handbooks and identify any changes that may be needed in light of these sweeping changes.

Background

[Section 703.3](#) of the San Francisco Planning Code contains specific land use controls on “formula retail” businesses — commonly referred to as chain stores. Under Section 703.3, formula retail use is defined as “a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a service mark.” The definition excludes certain common commercial chain uses, such as professional or medical offices and gas stations.

While San Francisco's Planning Code already regulates when and where formula retail establishments may start operations, the city has now enacted ordinances that regulate other employee management and retention aspects of formula retailers' operations.



The Retail Workers Bill of Rights

On November 25, the San Francisco Board of Supervisors unanimously passed two ordinances — together, the Retail Workers Bill of Rights, a comprehensive set of policies that would regulate the operation of formula retail

establishments in the city. The legislation was enacted on December 5 when Mayor Edwin Lee returned it to the Board of Supervisors unsigned. The ordinances are effective January 4, 2015, and will become operative 180 days thereafter.

The new ordinances would significantly alter the way chain stores and other large multi-establishment companies in San Francisco manage their operations by restricting their discretion and flexibility in making hiring decisions, allocating work among existing employees, scheduling when they work, and how much they have to be paid. In the event of a sale or transfer of a business, the new formula retail employer would be required to retain employees of the former employer based on seniority.

Formula Retail Employers

The new ordinances cover any entity — other than nonprofit corporations and governmental entities — that owns or operates a formula retail establishment with 20 or more employees in San Francisco (including corporate officers or executives). For these purposes, a formula retail establishment is a business that falls under the city Planning Code's definition of formula retail use, except that the business must have at least 20 retail sales establishments located worldwide. Businesses in the following major industry sectors may be classified as formula retail regardless of whether they are located in an area of the city — such as downtown — with no land use controls based on formula retail:

- Retail trade
- Food services (including restaurants and bars)
- Financial services (including banks and credit unions)
- Personal services
- Movie theaters

The city estimates that there are approximately 1,250 formula retail establishments in the city — or about 12% of all retailers.

The Ordinances

The ordinances discussed below would amend San Francisco's Police Code to impose new rules governing formula retail employers' hiring, scheduling, pay, and other employment practices.

The Hours and Retention Protections for Formula Retail Employees Ordinance. The ordinance ([No. 236-14](#)) would require covered employers to:

- Offer additional hours of work to current part-time employees before they could hire new part-time employees or subcontract
- Retain employees (other than managerial, supervisory, or confidential employees) for 90 days after the sale or transfer of the formula retail establishment to a new owner
- Make a post- sale or transfer written job offer to individuals on a retention list

For these purposes, part-time employees are employees who work less than 35 hours per week. Formula retail employers would be obligated to offer qualified part-time employees additional hours until the employee's hours reach 35 hours of work per week. The additional hours requirement would also apply to any janitorial or security contractor of a formula retailer.

The ordinance would also impose certain worker retention requirements in the event that a formula retail business is bought or sold. Following a change in control, the old formula retail employer would have to provide a “Retention List” identifying its employees along with their date of hire, rate of pay, average number of hours worked in the previous six months, job classification, and contact information. The new retail establishment would have to retain for 90 days employees (other than supervisory, managerial, or confidential employees) who had worked for the previous formula retailer for at least six months under the same terms of employment with respect to job classification, compensation, and number of work hours. During the 90-day period, employees on the Retention List could only be terminated for cause.

The obligation to hire employees from the Retention List would apply whether the new retailer operates the business in the same location or relocates it elsewhere in San Francisco. If the new business does not need all the individuals on the Retention List, it would be required to retain employees based on their hire date(s) by their former employer or under an applicable collective bargaining agreement.

A notice of the transfer of ownership would have to be posted at the affected location for 30 days and a notice of employees’ rights under the ordinance provided with their first paycheck after the transfer.

Other Worker Retention Requirements

Existing city law has worker retention requirements for grocery store workers, certain service employees, city contractors, and hospitality industry employers.

The Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance. The ordinance ([No. 241-14](#)) would require formula retail establishments to provide employees with advance notice of work schedules and schedule changes, compensation for changes made on short notice, and pay for unused on-call shifts; and to provide part-time employees with the some of the same terms and conditions of employment as full-time employees. This ordinance would also apply to Property Services Contractors — contractors or subcontractors of formula retail establishments that provide their janitorial and/or security services.

The ordinance would require formula retailers to provide their San Francisco employees with the following:

- Initial estimate of expected minimum hours per month, and the days and hours of their shifts
- Two weeks’ advance notice of work schedules, and advance notice of any schedule change
- Additional pay for each schedule change the employer makes on less than seven days’ notice
- Between two and four hours of pay for each on-call shift for which the employee is required to be available but is not in fact called in to work

The ordinance also requires formula retail establishments to provide equal treatment to part-time employees regarding (1) starting hourly wage, (2) access to employer-provided time off, and (3) eligibility for promotions, subject to certain qualifications.

Comment. The legislation follows on the heels of another ordinance — the [Family Friendly Workplace Ordinance](#) — intended to lend predictability and flexibility to hourly employees’ schedules. That ordinance, which took effect earlier this year, requires employers with 20 or more employees to consider employees’ requests for flexible or predictable work arrangements to assist with caregiving responsibilities.

In Closing

The new ordinances impose a number of burdens on formula retail businesses with operations in San Francisco, and are expected to impact about 40,000 private workers in the city. The ordinances restrict employers' discretion in making decisions about hiring, work allocation, scheduling, and compensation, while providing special protections for part-time employees. While San Francisco is the first city in the nation to put statutory restraints on workplace scheduling practices, other states and cities are considering similar measures. Whether they will adopt the measures remains to be seen.

Authors

Nancy Vary, JD
Abe Dubin, JD

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