

San Francisco Amends Formula Retail Employee Rights Ordinances

On July 3, two San Francisco ordinances, together known as the “Retail Workers Bill of Rights,” became operative. 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. On July 15, San Francisco enacted amendments to the new laws that will narrow coverage and provide other clarifications. Formula retail employers should update their employment policies and practices to ensure compliance.

Background

[Section 703.3](#) of the San Francisco Planning Code regulates when and where “formula retail” businesses — commonly referred to as chain stores — may start operations. Last year, San Francisco enacted two ordinances — together, the Retail Workers Bill of Rights, a comprehensive set of policies that govern formula retail employers’ hiring, scheduling, pay and other employment practices. The ordinances covered for-profit entities that own or operate a formula retail establishment in 20 or more locations worldwide and have at least 20 employees in San Francisco. The ordinances also applied to their contractors or subcontractors that provide janitorial and/or security services at a covered establishment in San Francisco. (See our [December 11, 2014 For Your Information](#).)

The [Hours and Retention Protections for Formula Retail Employees Ordinance](#) (now Article 33F of the Police Code), requires covered employers to offer additional hours of work, when available, to their part-time employees. It also requires successor employers to retain employees following a sale or other change in control of the business. The other ordinance, the [Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance](#) (now Article 33G of the Police Code), requires covered employers to provide employees with two weeks’ notice of work schedules, advance notice of schedule changes, and additional pay for schedule changes made on less than seven days’ notice and unused on-call shifts. The ordinance also provides part-time



employees with some of the same terms and conditions of employment as full-time employees. The new rules, which impact employers in industry sectors such as retail trade, food services, financial services, personal services and movie theaters, became operative on July 3.

The Amendments

On July 15, San Francisco enacted [amendments](#) to the Formula Retail Employee Rights Ordinances (Articles 33F and 33G of the Police Code). The amendments, effective August 14, change the new rules for formula retail employers in several important ways.

Both Ordinances Affected

The amended ordinances include three significant changes that alter both laws by: (1) narrowing employer coverage; (2) allowing union waivers; and (3) delaying enforcement.

Higher Coverage Threshold for Employers. The amendments redefine “formula retail establishment,” doubling the threshold number of establishments required to be a covered employer from 20 to 40 locations worldwide.

Collective Bargaining Waivers. The amendments allow unions that represent employees of formula retail establishments or property service contractors to waive any or all of the protections of both ordinances as part of a *bona fide* collective bargaining agreement. Any such waiver must be express, clear and unambiguous.

Delayed Enforcement by OLSE. The amendments allow the Office of Labor Standards Enforcement (OLSE) to issue only warnings and notices to correct violations of the ordinances — and not any other relief — during the first three months the new rules are operative. Thereafter, OLSE may order relief for violation of the ordinances, such as payment of lost wages, administrative penalties and enforcement costs.

Hours and Retention Protections for Formula Retail Employees Ordinance

The amended ordinance includes two significant changes that clarify the employer notice and employee acceptance provisions on additional hours.

Notice. The amendments allow employers to notify existing part-time employees of additional hours that are available either in writing or by posting a notice in a conspicuous workplace location where employee notices are customarily posted. Employers are also encouraged to post the electronic notice on their internal websites in a conspicuous location.

Additional Hours. The amendments allow part-time employees 72 hours (three days) to accept any additional hours offered to them by their employers. The 72-hour period begins when the employee receives the written offer of additional hours or when the employer posts the offer of additional hours, whichever is later. An employee who wishes to accept the additional hours must timely do so in writing. After 72 hours, the employer may hire new employees or use contractors or a temporary services or staffing agency to work the additional hours.

OLSE Guidance

The OLSE posted [FAQs](#), a [Fact Sheet](#) and a template [notice](#) of rights for use by employers beginning on July 3. Because the documents reflect the ordinances as originally enacted, they will have to be modified to reflect the changes to the law.

Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance

The amended ordinance requires employers to provide predictability pay for employees scheduled to work on-call shifts if their schedules are changed with less than seven days' notice.

In Closing

Soon after San Francisco's new hiring, work allocation, scheduling and pay restrictions on formula retail businesses became operative, several significant changes were made. Employers should update their employment policies and practices to ensure compliance with the amended ordinances.

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