



EMPLOYMENT LAW ALERT

JULY 2015

San Francisco Ordinances Impose New Requirements for Formula Retail Employers

Overview

Effective July 3, 2015, a pair of ordinances known collectively as the Formula Retail Employee Rights Ordinances or the Retail Workers' Bill of Rights ("Ordinances"), places substantial burdens on covered San Francisco employers and limits their flexibility to schedule part-time employees and to hire temporary labor.

Although the Ordinances became effective July 3, 2015, key provisions of these acts were recently changed when the Board of Supervisors voted to amend the Ordinances on July 7, 2015. Covered employers are now any entity that operates a Formula Retail Establishment as defined by the Planning Code, has 40 or more Retail Sales Establishments worldwide, and has 20 or more employees in the City of San Francisco.

The Ordinances, codified in Articles 33G and 33F of the Police Code,¹ were enacted with the goal of giving Formula Retail Workers greater notice of changes in their schedule or work hours, compensation for schedule changes made with fewer than seven-days' notice, and equal treatment for part-time employees, including the same starting hourly rate of pay, ability to take time off, and opportunities for promotion as those given to comparable full-time employees.

Covered Employers

A Formula Retail Employer is an employer located in San Francisco that (1) meets the Planning Code definition for "Formula Retail Use"; (2) employs 20 or more employees in San Francisco; and (3) operates 40 or more Retail Sales Establishments worldwide ("Employer"). Many of the provisions of the Ordinances also apply to Property Services Contractors.

A Formula Retail Employer is a retail sales or services business that maintains at least two of the following features:

- A standardized array of merchandise;
- A standardized façade;
- A standardized décor and color scheme;
- Uniform apparel;
- Standardized signage; or
- A trademark or servicemark.

¹ The Predicable Scheduling and Fair Treatment for Formula Retail Employees Ordinance is codified in Article 33G of the Police Code; the Hours and Retention Protections for Formula Retail Employees Ordinance is codified in Article 33F of the Police Code.

This broad definition includes employers in the following industries:

- Bars, restaurants, take-out food and other eating and drinking establishments
- Full, limited and partial financial services (including some banks)
- Liquor stores
- Massage establishments
- Movie theaters
- Department stores and other retail services
- Retail sales and service
- Nonretail sales and service
- Amusement game arcades
- Tobacco paraphernalia establishments
- Personal services

Covered Employees

Covered employees (“Employees”) have the following characteristics:

- Perform at least two hours of work in a given week for an Employer within the city of San Francisco; and
- Qualify as an employee entitled to the payment of a minimum wage under the California minimum wage law.

The Ordinances do not apply to executive, administrative and professional employees exempted from the overtime requirements and minimum wage coverage in the California IWC Wage Orders.

Pursuant to the recent amendment, employees of Formula Retail Establishments can now waive the protections contained in the Ordinances through a Collective Bargaining Agreement.

Requirements

Some of the more noteworthy requirements under the Ordinance are as follows:

Good Faith Estimate of Hours

- Prior to the start of employment, covered Employers are required to give a “good faith,” non-binding, written estimate regarding the expected minimum number of shifts the Employee will work each month and the days and hours of those shifts.

Predictable Scheduling and “Predictability Pay”

- Employers must provide Employees with their schedules two weeks in advance by posting the schedule in the workplace or transmitting an electronic copy (provided Employees are given access to electronic schedules at the workplace). If the Employer (not the Employee) changes the schedule with fewer than two-weeks’ notice, the Employer must notify the Employee in person, with a phone call, by email, or by other electronic communication.
- Employers must pay Employees between one and four hours of pay for changes made to Employee schedules with fewer than seven-days’ notice. This requirement also applies to “on-call” shifts, where an Employee is expected to be available for work but is not called in with fewer than seven-days’ notice.
- Exceptions to the penalty include situations in which shifts are canceled because the Employee is sick or unavailable, another Employee has been fired or sent home for discipline, or a natural disaster, Act of God or other incident significantly disrupts Employer operations.

Offering Additional Hours to Part-Time Employees

- Employers must offer additional hours of work to current qualified part-time Employees before hiring new employees, contractors, or temporary service workers/staffing agencies. Pursuant to the recent amendment, Employers (1) may offer these hours to Employees by posting a notice in a conspicuous location in the workplace, and (2) must give part-time Employees three days to accept the offer of additional hours.

Equal Treatment for Part-Time Employees

- With some qualifications and exceptions, Employers must give part-time Employees the same starting pay, access to paid and unpaid time off, and eligibility for promotions as those given to comparable full-time employees.

90-Day Employee Retention During Change in Control or Sale of a Business

- If a Formula Retail Establishment is sold, the new Employer must retain Employees who worked at the Formula Retail Establishment for at least 90 days before the sale of the business for an additional 90-day transition period.

Record-Keeping

- Employers must keep copies of work schedules, employment and payroll records of current and former Employees, and copies of written offers for additional work made to part-time Employees for at least three years.

Required Notices

- Employers must post a notice informing Employees of their rights under the Ordinances in a conspicuous workplace location. The notice can be downloaded at: www.sfgov.org/frlpo.

Penalties for Noncompliance

The Ordinances will be enforced by the San Francisco Office of Labor Standards Enforcement (“OLSE”). For the first three months following the July 3, 2015 operative date, the OLSE will only issue warnings and notices to correct.

After the three-month period has passed, the OLSE may order Employers to comply, award lost wages, impose an administrative fine, and require Employers to reimburse the City its costs for enforcing the Ordinances. Additionally, the San Francisco City Attorney may bring a civil action against an Employer believed to be in violation. If the City prevails, the City will be awarded reasonable attorneys’ fees and costs.

Recommendation

These Ordinances are complicated, still developing, and place sweeping restrictions on San Francisco Employers with potentially significant penalties for noncompliance. If you think your business may be covered by the Ordinances, please contact your Payne & Fears LLP attorney for more information.

About the authors:

[Leila Narvid](#) is a partner in the San Francisco office of Payne & Fears LLP, where she represents employers in all areas of labor and employment law. She has extensive experience in various employment litigation matters, including wage and hour violations, discrimination, sexual harassment, wrongful termination, retaliation, defamation and other employment-related torts, and disability accommodation. Ms. Narvid can be reached at (415) 738-6842 or ln@paynefears.com.

[Alexandra Pichette](#) is an associate in the San Francisco office of Payne & Fears LLP where her practice focuses on all aspects of labor and employment litigation, including wage and hour defense, breach of contract, trade secrets, unfair business practices, wrongful termination and discrimination. Ms. Pichette can be reached at (415) 738-6843 or alp@paynefears.com.

If you would like further information, please contact your Payne & Fears LLP attorney.

The Employment Law Group of Payne & Fears LLP specializes in representing local, regional and national employers in all aspects of labor and employment law and related civil litigation. Our major areas of expertise include employment discrimination and wrongful termination litigation, wage and hour counseling and litigation, union prevention and labor-management relations, protection of trade secrets, unfair competition litigation, consultation and advice on a broad range of personnel matters, and immigration advice.

The Employment Law Alert is published periodically by Payne & Fears LLP and should not be construed as legal advice or legal opinion on any specific fact or circumstance. The contents are intended for general information purposes only, and you are urged to consult counsel concerning your own situation and any specific legal questions you might have. This e-mail may be considered an advertisement for purposes of regulation of commercial electronic mail messages. For further information please contact your Payne & Fears LLP attorney.

© 2015 Payne & Fears LLP. All Rights Reserved

www.paynefears.com