

San Francisco's Retail Workers Bill of Rights Has Passed: Are You Ready?

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Operative July 3, 2015, **companies located in San Francisco who are "Formula Retail Establishments" must comply with additional wage and hour requirements under the Retail Workers Bill of Rights** (a combination of two ordinances, Ordinance 236-14 and Ordinance 241-14), the country's first-ever such legislation.

Supporters claim that this new law is intended to improve life for retail employees which, according to some accounts, include more than 40,000 workers at 1,250 locations in the City of San Francisco. In passing the bill, the San Francisco Board of Supervisors found that Formula Retail Establishments are a major employment base and stated that the City has a strong interest in ensuring that jobs at these establishments allow employees to meet their basic needs and achieve economic security. An overview of this onerous and extensive legislation follows.

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Formula Retail Establishments

The new law applies to companies who employ 20 or more employees in 20 or more locations worldwide and who operate a Formula Retail Establishment in San Francisco. Other than the number of locations, "Formula Retail Establishments" borrow from the definition of "Formula Retail Use" in The San Francisco Planning Code and generally have standardized merchandise, facade, worker apparel, interior design, signage and/or trademarks. Of course retail stores are included, but so are many businesses that one would not commonly think of as retailers. For example, hotels, restaurants, bars, movie theatres, certain financial institutions, and "Property Services Contractors" such as janitorial and/or security services contractors. For a full listing, click [here](#).

Part-Time Employee Preferences and Retention After Ownership Change

Under this new law, employers are generally required to: (a) offer additional hours of work to current part-time employees before hiring new employees or subcontractors; and (b) retain employees (*i.e.*, by the successor employer) for 90 days upon change in ownership control of the business.

Initial Estimate of Minimum Hours

Prior to the start of employment, employers must provide new employees with a good faith estimate in writing of the employee's expected minimum number of scheduled shifts per month, and the days and hours of those shifts. The estimate must not include on-call shifts. This is a non-binding estimate. It is not a contractual offer.

Two Weeks' Notice of Work Schedules & Predictability Pay

Employers must give employees at least two weeks' advance notice of employees' work schedules. Changes on less notice requires employers to issue additional "predictability pay" for each previously scheduled shift that the employer moves to another date or time or cancels, or each previously unscheduled shift that the Employer requires the employee to come into work:

- With less than seven days' notice but 24 hours or more notice to the employee, one hour of pay at the employee's regular hourly rate

- With less than 24 hours' notice to the employee, two hours of pay at the employee's regular hourly rate for each shift of four hours or less
- With less than 24 hours' notice to the employee, four hours of pay at the employee's regular hourly rate for each shift of more than four hours

There are exceptions to predictability pay requirements, such as an employer request that an employee work overtime or fill in for another employee who is out due to sickness or discipline.

Pay for On-Call Shifts

Employers must provide employees with the following compensation for each on-call shift for which the employee is required to be available but is not called in to work:

- Two hours of pay at the employee's regular hourly rate for each on-call shift of four hours or less
- Four hours of pay at the employee's regular hourly rate for each on-call shift of more than four hours

Equal Treatment to Part-Time Employees

Employers must generally provide part-time employees with equal treatment in the hourly wage, access to pro-rated time off, and eligibility for promotions.

Impact of Non-Compliance

The San Francisco Office of Labor Standards Enforcement (OLSE) is authorized to take appropriate steps to enforce and coordinate enforcement of this new law, including the investigation of any possible violations, and order any appropriate relief, including, but not limited to, requiring an employer to offer additional hours of work to part-time employees, reinstatement, penalties, payment of lost wages and the payment of an additional sum as an administrative penalty that does not exceed the amount of the award for lost wages. Further, to compensate the City for the costs of investigating and remedying the violation, the OLSE may also order the employer to pay the City's enforcement costs.

Conclusion

While this new law will take effect in January 2015, it does not become operative until July 3, 2015. As such, employers affected by the Retail Workers Bill of Rights have some time to determine how to best comply. This is an opportune time to review with counsel your employment and hiring practices, including the manner in which your company schedules employee shifts and changes them to ensure compliance by July 2015.

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