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PERSPECTIVE

## Retail Workers' Bill of Rights set to take effect

By Eric Steinert

This month, many large retail employers in San Francisco will need to prepare, not only for the summer fog that's sure to roll into the city, but also the new set of San Francisco ordinances that will affect their businesses. The Board of Supervisors passed two pieces of legislation — the Hours and Retention Protections for Formula Retail Employees and the Fair Scheduling and Treatment of Formula Retail Employees ordinances — colloquially referred to as the “Retail Workers' Bill of Rights.” These laws become operative July 3, and will significantly impact the use of part-time and on-call employees, as well as scheduling for all employees, for “formula retail establishments” in the city and county of San Francisco.

The new laws apply to “formula retail establishments,” generally defined as retail businesses with at least 20 worldwide locations and at least 20 employees in San Francisco with standardized products, signage, trademarks, etc.

The laws cover many chain retail stores providing virtually any retail consumer products and services, including retail clothing, banks, drug stores, restaurants, bars, supermarkets, liquor stores, fast food and movie theaters, among others. The laws were designed to regulate large national chains, but in practice may encompass a much larger swath of business types and sizes.

**Part-time employees.** The ordinances will effectively reduce or eliminate the use of part-time workers and could significantly

impact employers who condition benefits eligibility on a part-time hourly threshold. “Part-time employees” under the new law are those working less than 35 hours per week. Employers will be required to offer additional hours to part-time employees before hiring new employees for similar work — e.g., if a new position would involve 40 hours per week, those 40 hours must first be offered to part-time workers to bring them above the 35 hour per week threshold. The ordinances also require equal treatment for part-time employees with respect to wages, time off and promotions.

**Scheduling.** The ordinances require covered employers to use set schedules and penalize certain schedule changes. Employers must provide — upon hiring but before work commences — an initial written estimate of shifts per month including days and hours. Employers must also provide set schedules two weeks in advance and pay penalties to employees if the schedules are changed with less than seven days' notice, and higher penalties for changes within 24 hours. Employers will have to pay penalties ranging from two to four hours' pay for “on-call” employees who are not called in for a shift. There are exceptions for shift changes caused by employee absences, vacations, suspensions or terminations. The ordinances as currently written also cover salaried, exempt employees who by definition are not required to work set schedules.

**Miscellaneous requirements.** Other requirements include posting employees' rights under these ordinances, retention of payroll,

work schedules and undefined “employment” records for three years, as well as prohibitions against retaliation for exercising rights under the ordinances. However, there is no carve out for collective bargaining agreements as the ordinances currently read, but there is a pending amendment that would allow collective bargaining agreements to include a clear and unambiguous provision in which some or all of the new protections are waived. The laws also apply to janitorial and security contractors for covered retail establishments. If a covered retail establishment is sold, the buyer must hire the seller's non-supervisory employees for 90 days.

**Penalties.** The Office of Labor Standards Enforcement will enforce the ordinances, and the San Francisco city attorney will be able to file civil actions. Penalties for schedule changes range from one to four hours' pay per affected employee, per shift. The ordinances provide double damages, namely: lost wages plus a “civil penalty” not to exceed lost wages, reinstatement, and attorney fees and costs. Administrative penalties for violations of the Hours and Retention ordinance are \$500 per employee per violation; for the Predictable Scheduling ordinance, penalties are \$50 per employee per shift. Moreover, employers face joint and several liability for janitorial/security contractor violations.

**Ambiguity and confusion for employers.** Unless the laws are clarified to exclude salaried, exempt employees, employers will need to provide generalized “schedules” for exempt employ-

ees while at the same time clarifying — consistent with applicable wage-hour law — that they are not required to work set hours and are paid on a salary basis. The laws do not define “employment records” to be retained for three years. The application of the ordinances to janitorial and security contractors who also contract with non-covered employers will be difficult. The forced hiring of non-supervisory employees by purchasers will likely be subject to legal challenge. Additional ambiguity and confusion regarding this law seemingly will persist well past the operative date of the ordinances.

Affected employers must take action now in order to comply with the numerous new obligations imposed by these ordinances beginning July 3. Employers who are “formula retail establishments” and meet the other qualifying criteria proscribed in the ordinances, would be wise to seek counsel to ensure they are compliant.

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