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Update: Amendments to San Francisco Retail Workers Bill of Rights Take Effect

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Less than one week after the San Francisco Retail Workers Bill of Rights became effective, it was amended in several ways that impact employers' compliance obligations going forward.

The amendments were passed on July 7, 2015, only four days after the San Francisco Bill of Rights (also referred to herein as the Ordinances) went into effect. For detailed information regarding the general scope and applicability of the Ordinances, see our June 2015 LawFlash "San Francisco Retail Workers Bill of Rights Takes Effect July 3, 2015."

As outlined below, several of the amendments appear to ease (or at least clarify) an employers' obligations under the Ordinances, while one amendment increases the likelihood of penalties being assessed. This LawFlash describes the recently issued amendments to the Ordinances and offers recommendations for employers regarding their potential impact.

More Limited Definition of Formula Retail Establishment

Only those retailers that fall within the definition of a "Formula Retail Establishment" are subject to the Ordinances. Originally, a retailer needed to have only 20 retail sales establishments worldwide to qualify. The amendment doubles that number, so that a retailer must have at least 40 retail sales establishments worldwide to be subject to the Ordinances.

Collective Bargaining Agreement Exception

The amendments provide that where employees of a "Formula Retail Establishment" are covered by a bona fide collective bargaining agreement, "all or any portion of the applicable requirements of" the Ordinances may be waived, so long as the waiver is express and stated in "clear and unambiguous terms" in the collective bargaining agreement.

Increased Predictability Pay for Changes to On-Call Shifts

The Ordinances impose monetary penalties (referred to as "predictability pay") when a retailer makes a change to an employee's schedule without providing a certain amount of notice of the change. As originally enacted, a covered retailer would not have to pay any predictability pay for

cancelling or changing the date or time of an on-call shift so long as the employee was notified 24 hours or more prior to the start of the on-call shift. The amendments eliminate that shorter notice period. Going forward, if a retailer provides less than seven days notice of any change to the date or time of an on-call shift (including the cancellation of that shift), then the retailer must pay the employee one hour of pay at his or her regular hourly rate.

Three Month Safe Harbor Period

The Ordinances took effect on July 3, 2015. The amendments provide for an initial safe harbor period of three months—through October 3, 2015—during which time the San Francisco Office of Labor Standards and Enforcement will issue only warnings and notices to correct employers found to have violated the Ordinances, and will not impose any fines or other monetary penalties.

Posting of Written Offer of Additional Work to Part-Time Employee

The Ordinances require that covered employers offer work to existing part-time employees before hiring any new full- or part-time employees, contractors, or temporary employees to handle additional anticipated work. While the Ordinances require an employer to make such offer "in writing," it was unclear what that specifically meant. The amendments clarify that the written offer of additional work hours may be made directly to one or more employees or, alternatively, by posting the offer in a conspicuous location in the workplace where notices to employees are customarily posted. The amendments also expressly encourage (but do not require) an employer to post the offer electronically in a conspicuous location on the internal company website.

Time Limit and Method for Accepting Offer of Additional Work Hours

Under the Ordinances, part-time employees may (but are not required to) accept an offer of additional work hours. As originally drafted, the Ordinances provided no guidance as to how long an employer had to wait to determine whether the offer would be accepted. The amendments impose an outer time limit of 72 hours (three days) by which time employees may accept any additional work hours offered to them. The 72 hour consideration period runs from the later of when the employee receives the written offer or when the employer posts the notice. The amendment also mandates that a part-time employee who wishes to accept the additional work hours must do so in writing.

Recommendations Based on Recent Amendments

- Use the three-month safe harbor provision to review hiring, promotion, scheduling, time off, and wage policies applicable to employees in San Francisco, and ensure such policies and practices comply with the Ordinances, as amended.
- If a location is covered by a collective bargaining agreement (CBA), consider whether it is feasible to include an express waiver of some or all of the requirements of the Ordinances in a newly negotiated CBA or side letter agreement with the union.
- Make sure that on-call shifts are cancelled or changed at least seven days in advance of the scheduled shift to avoid having to pay any predictability pay to the employee.
- Develop a form posting that notifies part-time employees of an offer of additional work hours and also develop a form for employees to accept such offer.
- Educate managers, payroll, and human resources personnel about these new rules.

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