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LEGAL ALERT

Approved San Francisco Retail Workers Ordinance Means More Restrictions For Employers

The San Francisco Board of Supervisors has voted unanimously to approve a city ordinance, which will create a number of obstacles for many businesses – including retail stores, restaurants, and banks. The ordinance, referred to as the “Retail Workers Bill of Rights,” will severely limit employers’ flexibility and discretion in hiring and allocating work hours among employees. In addition, employers will be penalized if they fail to meet the burdensome and intricate requirements established by the ordinance.

The terms of the ordinance, introduced by Supervisors Eric Mar and David Chiu, will become effective 180 days after the mayor signs the bill, and it is widely anticipated that Mayor Ed Lee will sign it soon. Even if Mayor Lee vetoes the bill, which is not likely, the Board of Supervisors will be able to override the veto and implement the ordinance as is. As such, it is important for employers to quickly anticipate and adequately prepare for the ramifications of this game-changing ordinance.

Which Employers Are Impacted?

The ordinance will affect all “formula retail” businesses – more commonly called “chain stores” – with 20 or more locations worldwide that employ 20 or more employees within San Francisco. An employer is considered a “formula retail” business if it maintains two or more 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 service mark. The definition of “formula retail” business is construed broadly to include more than the typical retail establishment, such as restaurants, banks, and other service providers.

The new ordinance not only imposes significant employment obstacles for chain stores operating in San Francisco, but also affects employment relationships with all employees, including part-time workers and even subcontractors. Given the inclusive language of the ordinance, many employers’ ability to make important business decisions in hiring and work scheduling will be hampered.

New Obstacles Imposed

The ordinance creates a number of restrictive obstacles relating to the allocation of work hours among full-time and part-time employees. Important scheduling and hiring decisions that were traditionally made



with business judgment in mind must now be tailored to comply with the severe restrictions listed below.

1. Additional Hours Offered to Current Part-Time Workers

Employers will be required to first offer additional hours of work to current part-time employees before being able to hire any new employees or subcontractors, either full-time or part-time. The offer must be made in writing, and the current part-time employees must have adequate time to respond. The additional hours of work must be the same or similar to the work performed at the employer’s discretion. In essence, an employer is forced into a constant hiring freeze until all its part-time employees receive the requisite 35 hours of work per week.

2. Biweekly Notice of Work Schedule

Employers will be required to provide new employees with an initial estimate of the number of scheduled shifts that the employee will receive per month, along with the days and hours that the shifts will occur. Employers will also be required to provide two weeks of advance notice of the work schedule, no matter if the employee is full-time or part-time.

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3. *Advance Notice Penalties*

Should the provided work schedule change and result in cancellation of an employee's shift, an employer will have to pay penalties in the form of payment to the employee. For each schedule change an employer makes with less than seven days' notice, the employer will be subject to the following compensation penalties: a) one hour of pay for each shift change made with less than seven days' notice but 24 hours or more notice; and b) between two and four hours of pay, depending on the duration of the shift, for each shift change made with less than 24 hours' notice. Additionally, for each on-call shift for which an employee is required to be available but is not called into work, the employer must provide between two and four hours of pay, depending on the duration of the on-call shift.

4. *Seniority-Based Employee Retention Upon Sale of Business*

If a business changes ownership, the successor business will be forced to retain the employees from the previous business for at least 90 days. During this period, the new business must retain the previous employees under the same terms of employment with respect to job title, compensation, and number of hours worked. During this 90-day period, an employer may not terminate these employees without good cause.

If a successor business establishes that it does not need to employ all the previous employees, the business must retain a formal list of these employees and give them hiring preference if additional work arises. In hiring from this retention list, employers must give preference to these employees based solely on seniority, which is determined by the date of hire with the previous employer. A successor business is prohibited from hiring new employees, both full-time and part-time, until the previous employees are offered employment.

This obligation applies to a successor business even if the purchasing business relocates elsewhere in San Francisco. But the 90-day period does not begin if the new business delays in opening due to remodeling or relocation.

Finally, employers are required to inform every employee about all these created rights under the new ordinance. Failure to provide notice or comply with these restrictions will result in potential liability for all affected employers. As such, employers will have significantly limited flexibility in adapting to fluctuating hiring and scheduling needs.

How To Prepare?

In anticipation of these sweeping new changes, San Francisco employers should review and be prepared to formally update their employment policies regarding hiring and scheduling practices.

Employers should also consider revising company employee handbooks to account for these changes, as handbook language that lacks proper notice of these newly established employee rights may be used to establish violations of the ordinance.

For more information contact your regular Fisher & Phillips attorney or our San Francisco office at (415) 490-9000.

This Legal Alert provides an overview of certain specific municipal law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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