

GENERAL SERVICES AGENCY

## OFFICE OF LABOR STANDARDS ENFORCEMENT

DONNA LEVITT, MANAGER

**Formula Retail Employee Rights Ordinance Fact Sheet<sup>1</sup>****Effective Date:** January 5, 2015**Enforcement Begins:** July 3, 2015**San Francisco Police Code Articles 33F and 33G****Covered Employers:**

The new laws apply to “*Formula Retail Establishments*” with at least 20<sup>2</sup> formula retail establishments worldwide and 20 or more employees in San Francisco. The term “Formula Retail Establishment” (per section 303.1 of the SF Planning Code) applies to retail sales or service establishments that maintain at least two of the following features: (1) a standardized array of merchandise, (2) a standardized façade, (3) a standardized décor and color scheme, (4) uniform apparel, (5) standardized signage, (6) a trademark or servicemark.

**Basic Overview:**

1. **Scheduling – Before Employment.** Prior to the start of employment, employers are required to provide new employees with a good faith written estimate of the employee’s expected minimum number of scheduled shifts per month and the days and hours of those shifts. The estimate need not include on-call shifts. Employers must consider requests from an employee to modify the proposed schedule. The employer has sole discretion to grant or deny the request, and must notify the employee of the decision.
2. **Scheduling – Ongoing.** Employers must provide employees with their schedules two weeks in advance. Schedules may be posted in the workplace or provided electronically, so long as employees are given access to the electronic schedules at work. Employers must retain employee work schedules and payroll records for at least three years. Employers must provide employees with *notice of schedule changes*. A “schedule change” is defined as changing the date or time of a scheduled shift, cancelling a scheduled shift, or requiring the employee to work when he or she was previously unscheduled.
3. **Predictability Pay.** If changes are made to an employee’s schedule with less than seven days’ notice but more than 24 hours’ notice, the employer must provide the employee with one hour of pay for each shift change, at the employee’s regular hourly rate. If the

<sup>1</sup> This fact sheet is based on Police Code Articles 33F and 33G, passed by the San Francisco Board of Supervisors on November 25, 2014. This document does not reflect pending amendments that were introduced at the Board of Supervisors on March 17, 2015.

<sup>2</sup> Pending amendments, if passed, would change from 20 to 40 the number of retail sales establishments worldwide required for a formula retail establishment to be covered by the Ordinances.

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employer changes the employee's schedule with less than 24 hours' notice, the employer must provide two hours of pay if the changed shift is four hours or less or four hours of pay if the changed shift is longer than four hours, at the employee's regular hourly rate.

**Pay for On-Call Shifts.** If an employee is required to be "on-call," but is not called in to work, the employer must provide the employee with two hours of pay if the on-call shift lasted four hours or less, or four hours of pay if the on-call shift exceeded four hours. If the employer provides at least 24 hours' notice that the on-call shift has been cancelled or moved to another date, then the employer will not be required to provide this compensation to the employee.

4. **Exceptions to Predictability Pay and Pay for On-Call Shifts:** Employers do not have to provide "predictability pay" or payment for on-call shifts if any of the following conditions apply:
  - a) Operations cannot begin or continue due to threats to Employees or property;
  - b) Operations cannot begin or continue because public utilities fail;
  - c) Operations cannot begin or continue due to an Act of God (such as an earthquake);
  - d) Another Employee previously scheduled to work that shift is unable to work and did not provide at least seven days' notice;
  - e) Another Employee failed to report to work or was sent home;
  - f) The Employer requires the Employee to work overtime ; or
  - g) The Employee trades shifts with another Employee or requests a change in shifts.
5. **Additional Work for Part-Time Employees.** Employers must offer, in writing, any extra work hours to current qualified part-time employees before hiring new employees or subcontractors or staffing agencies to perform additional work. Under the ordinance, the employer is obligated to offer extra work hours to a current part-time employee if (1) the employer reasonably determines that the employee is qualified to perform the work, and (2) the work is the same or similar to the work the employee has performed for the employer. The employer is required to offer only the number of hours that the employee would need to work 35 hours in a workweek. Employers must retain offers of additional hours to employees for at least three years.
6. **Equal Treatment for Part-Time Employees.** Employers must provide equal treatment to part-time employees, as compared to full-time employees at their same level, with respect to (1) starting hourly wage, (2) access to employer-provided paid time off and unpaid time off; and (3) eligibility for promotions, subject to certain qualifications. Hourly wage differentials are permissible if they are based on reasons other than part-

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time status, such as seniority or merit systems. Further, employees' time off allotments may be prorated based on hours worked.

7. **Employee Retention.** If a Formula Retail Establishment is sold, the Successor Employer must retain, for 90 days, all employees who worked for the former employer for at least 90 days prior to the sale. If the Successor Employer determines it needs fewer employees, the businesses must retain the employees based on seniority. This requirement does not apply to supervisory or managerial employees. A public notice of change of control must be posted at the Establishment within 24 hours of the date of transfer of ownership. In addition, the Successor Employer must provide written notice to retained employees about their rights.
8. **Transition Employment Period.** If the Successor Employer determines that it requires fewer Eligible Employees than were employed by the Incumbent Employer, the Successor Employer shall retain Eligible Employees by seniority based on the date of hire by the Incumbent Employer or, if there is an applicable collective bargaining agreement, pursuant to that agreement.
9. **Property Services Contractors.** Janitorial and Security Contractors of Formula Retail Establishments covered by these Ordinances must comply with most of the provisions of Police Code Articles 33 F and G. In service contracts with contractors for janitorial or security services, covered employers must include: (1) a provision requiring the contractor to comply with the Ordinances; and (2) a copy of the Ordinances.
10. **Workplace Posting.** Formula Retail Establishments are required to post a notice at the workplace informing covered employees of their rights under the new laws.
11. **Retaliation Prohibited.** It is illegal for an employer to take adverse action against any person in retaliation for exercising his or her rights under the Ordinances.

**Enforcement:**

The San Francisco ***Office of Labor Standards Enforcement (OLSE)*** is charged with implementing and enforcing the ordinances. The OLSE can order compliance, impose administrative fines, and require employers to pay lost wages and penalties to employees and reimburse the City's enforcement costs. Additionally, the ordinances authorize the City Attorney to bring a civil action against employers for violation of the laws. If an employer fails to maintain or retain records as required by the new laws and absent clear and convincing evidence otherwise, the City will presume non-compliance with these ordinances.