

# Formula Retail Employee Rights Ordinances (FRERO)

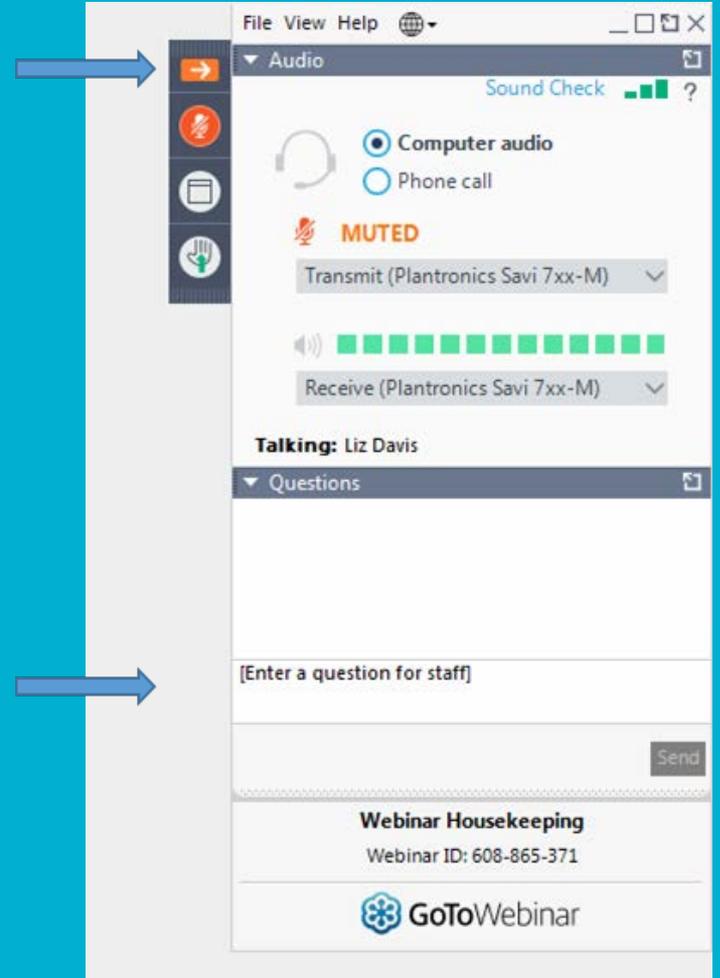
September 24, 2019

# Today's Presenters:

- Lucia Lin, Young Workers United
- Esperanza Fonseca, United for Respect

# Webinar Housekeeping

- You should see a control panel like this on the right side of your screen
- The panel should minimize automatically when you aren't using it. To minimize or re-open, click the orange arrow.
- Use the “Questions” box to ask your questions during the presentation.



# Agenda

- ★ FRERO Overview
- ★ Case Study: The Gap, Inc.
- ★ Scenarios of Common Challenges
- ★ Follow Up Resources
- ★ Questions & Answers

# FRERO Overview

# Ordinance History

## Purpose

To ensure that employees at formula retail establishments can meet their basic needs, achieve economic security, and work more predictable work schedules, and that part-time employees are treated fairly and equally

## Legislative History

Adopted by the San Francisco Board of Supervisors in November 2014; requirements took full effect in October 2015



photo by jon bunting

# FRERO Covered Employers



created by katemangostar

- Planning Code Section 303.1 defines *Formula Retail Establishment* as a retail or service business with any two of the following:
  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  
*and* 11 or more locations worldwide
- FRERO Covered Employers are *Formula Retail Establishments* with **40** or more locations worldwide **and** 20 or more employees in SF

# Additional Work for Part-Time Employees

Before hiring new employees or using contractors or a staffing agency, FRERO Covered Employers shall first offer the additional work to existing part-time employees, if:

1. The part-time employees are qualified to do the work
2. The additional work is the same or similar to work performed by the part-time employee
  - The offer must be in writing or posted
  - Employers are only required to offer hours up to 35 hours/week



# Employee Retention

If a Formula Retail Establishment is sold, the successor employer must:



1. Continue to employ Eligible Employees (worked for at least 90 days prior to sale) for 90 days; does not apply to managers or supervisors
2. Continue to employ Eligible Employees during this period under the same terms of employment (job classification, compensation, and number of hours worked)
3. Retain employees by seniority if fewer employees are needed

# Advance Notice of Work Schedule

- Employers must provide new employees with a written estimate of the employee's expected shifts per month, and the days and hours of those shifts
- Employers must consider a new employee's request to modify the expected work schedule
- Employers must provide employees with at least two weeks notice of their work schedule by posting or by transmitting electronically



# Predictability & On-Call Pay

Employers must provide “predictability pay” (compensation above the employee’s regular pay) for each change in schedule

Advance Notice	Length of Shift	Compensation
Less than 7 days & 24 hrs or more	Any Length	1 Hour of Pay
Less than 24 hrs	4 Hrs or Less	2 Hours of Pay
Less than 24 hrs	More than 4 Hrs	4 Hours of Pay

Employers must compensate an employee for each on-call shift for which the employee is required to be available but is not called in

Length of On-Call Shift	Compensation
4 Hrs or Less	2 Hours of Pay
More than 4 Hrs	4 Hours of Pay

# Predictability & On-Call Pay - Exceptions

- Threats to employees or property safety
- Public utilities failures
- Operations cannot begin or continue due to an Act of God or other cause not within the Employer's control
- Another previously scheduled Employee cannot work and Employer did not receive 7 days' notice of the absence
- Another previously scheduled Employee failed to report to work, was terminated or was sent home for disciplinary action
- Employer requires Employee to work (mandatory) overtime
- The Employee requests a change in shifts, hours or work schedule

# Equal Treatment for Part-Time Employees

- Same starting hourly wage as full-time employees who hold jobs that require equal skill, effort, and responsibility
- Same access to paid and unpaid time off as full-time employees in the same job classification; time off hours may be pro-rated
- Same eligibility for promotions afforded to full-time employees



# Additional Employer Responsibilities

- Post Multilingual Notice
- Retaliation Prohibited



*Covered Employers must post this Notice*

## OFFICIAL NOTICE

### Formula Retail Employee Rights Ordinances

Beginning on July 3, 2015, Formula Retail Establishments with at least 40 retail sales establishments worldwide and 20 or more employees in San Francisco must comply with the following requirements:

1. **Additional Hours** – Before hiring new employees, offer additional hours of work to qualified part-time employees who have performed similar work for the employer.
2. **Schedules and Predictability Pay** – Provide two weeks' notice of work schedules and provide "predictability pay" if schedules change with less than 1 week's notice, except when:
  - a. another employee is absent and did not give the employer at least 7 days' notice of the absence;
  - b. another employee is fired or told to stay home as a disciplinary action;
  - c. the employer requires the employee to work overtime;
  - d. business operations cannot begin or continue (for reasons out of the Employer's control); or
  - e. the employee trades shifts or requests a schedule change.
3. **Pay for On-Call Shifts** – Provide pay for on-call shifts when the employee is not called into work.
4. **Equal Treatment for Part-Time Employees** – Provide part-time employees with the same starting hourly wage, access to time off, and eligibility for promotions as full-time employees who perform similar work.
5. **Retention** – Continue to employ all employees for 90 days if the store changes ownership, subject to certain conditions.

These requirements apply to janitorial and security contractors at covered Formula Retail Establishments.

The City may investigate possible violations, and can order violators to pay penalties and back wages. Employers may not punish employees who exercise their rights under these Ordinances or who cooperate with the City in enforcement. For more information about these requirements, visit [www.sfgov.org/frero](http://www.sfgov.org/frero) or contact the City's Office of Labor Standards Enforcement (OLSE) at (415) 554-6461 or [frero@sfgov.org](mailto:frero@sfgov.org).

You may file a confidential complaint.

# Investigation and Enforcement

San Francisco  
Office of Labor Standards  
Enforcement (OLSE)

OLSE is authorized to investigate and enforce violations of the FRERO ordinances

- Payment of lost wages
  - Payment of penalties to employees and the City
  - \$500 Administrative Fines
  - City Attorney may file civil action
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# CASE STUDY: THE GAP INC

# Fair Workweek Study

March 2018

## A Fair Workweek: Good for Businesses and Workers



Working people increasingly experience unpredictable part-time work schedules that exacerbate inequality by causing under-employment and volatile incomes. When parents have ever-changing work schedules, families struggle to meet basic expenses and plan for childcare, family meals, or doctor's appointments. These challenges are especially common for retail, food service, and hospitality workers.



### What is a Fair Workweek?

A family-sustaining workweek ensures that working people have predictable, stable hours with flexibility and the opportunity to work full-time. Policies include advance notice of work schedules, access to more hours, adequate rest between work shifts, and flexible, responsive schedules.

### What is just-in-time scheduling?

"Just-in-time scheduling" occurs when companies rely on algorithms to automate workers' schedules based on projected customer demand, often on an hourly basis. This scheduling practice wrecks havoc on workers' lives as their workweeks and incomes change from day to day and they are required to call in the day of their shift to see if they should come to work.

### Research shows that a Fair Workweek is good for business.



Workers and their families thrive on full-time jobs with stable, predictable, and flexible hours, but industry groups have complained that Fair Workweek policies are bad for business. In fact, research has shown that businesses can create schedules that deliver predictability, stability, flexibility and adequate hours and enhance their bottom line. By treating front-line workers as an asset that can boost a company's profitability—rather than as a cost to be contained—businesses can increase productivity and sales, and actually reduce long-term labor costs.

1 - A Fair Work Week: Good for Businesses and Workers

### Q: How does a Fair Workweek reduce labor costs and boost business operations?

**A: By offering workers a Fair Workweek, businesses can:**



**Boost Profits:** When businesses invest in workers by offering balanced schedules, higher wages, and training, they benefit with improved store operations, greater labor productivity, and higher profits.<sup>1</sup> Increased productivity and sales—combined with cost savings from lower rates of absenteeism and turnover—allow businesses that adopt Fair Workweek policies to attain higher profits.



**Recruit and Retain Talented Workers:** There is growing consensus that offering stable yet flexible schedules helps to recruit and retain talented staff.<sup>4</sup> Staff turnover is very expensive for companies, costing 20% of annual pay.<sup>5</sup> Offering stable full-time hours dramatically reduces turnover. For example, one study showed that turnover can be 34% higher among part-time workers than full-time workers.<sup>6</sup>



**Improve Worker Performance:** Managers report that workers who can work their preferred hours are less distracted, have a better attitude, and perform better.<sup>7</sup> Studies have shown that workers with unpredictable schedules have low morale, receive less training, and make more mistakes while those with more predictable schedules are more likely to be cross-trained on various job duties, are more knowledgeable, and provide faster customer service.<sup>8</sup>



**Reduce Costly Absenteeism:** High rates of absenteeism increase labor costs, lower productivity and drain management's time.<sup>9</sup> Stores with adequate staffing levels see higher sales, are more efficient, and provide better customer service.<sup>8</sup> Short-staffing caused by unfilled absences is costly: a large multi-industry survey found that the cost of worker absences at least 15% of base payroll, and unplanned absences reduce productivity by nearly 37%.<sup>9</sup>

### Q: If stable schedules are good for business, why haven't more companies adopted Fair Workweek policies?

**A: Conventional business practices rely on inaccurate assumptions on how to boost profits.**



On-call scheduling, last-minute shift changes, short shifts, and over-reliance on part-time hours have become common practice in the service industry. Many service sector businesses—including those in retail, food service, and hospitality—assume that just-in-time scheduling can contain labor costs by matching staffing levels to customer foot traffic through workforce

management technology (WFM).<sup>10</sup> Yet, with mounting public attention, employers are becoming aware of the hidden costs associated with unstable schedules, such as absenteeism, turnover, low productivity, and unsatisfactory customer service. Some employers are now starting to emphasize worker engagement, and are adopting policies to provide stable, predictable work schedules that offer adequate work hours and respond to worker availability.

### Q: Is it burdensome for a business to implement Fair Workweek policies?

**A: Technology makes Fair Workweek policies easy to implement.**

Workforce management technologies can be part of the solution by creating predictable, balanced schedules.<sup>11</sup> In cities and states with Fair Workweek laws, WFM tools can be programmed to automate policy compliance and easily retrieve compliance records. WFM technology allows employers to provide workers with stability

and flexibility while also matching staffing to customer demand.<sup>11</sup> Many companies are now adapting new mobile technologies that allow workers to adjust their availability and swap shifts.



2 - A Fair Work Week: Good for Businesses and Workers

# Gap Inc Stable Schedules Study



## Major Findings

- Stable schedules boost profits & increase sales
- Stable schedules double labor productivity
- Stable schedules improve retention of seasoned sales associates
- Decisions from corporate headquarters, not customer traffic, drive most schedule instability

# Scenarios of Common Challenges

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- Posted Schedules do not include a “run date” that indicates a two-week advance notice.
- No documentation that additional hours were offered to part-time workers before hiring new employees.
- Not having iterations of employee schedules or documentation on why schedules were changed.



# Follow Up Resources

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- San Francisco Office of Labor Standards Enforcement (OLSE)
  - [www.sfgov.org/frero](http://www.sfgov.org/frero)
  - [frero@sfgov.org](mailto:frero@sfgov.org)
  - (415) 554- 6461
- Young Workers United
  - [www.youngworkersunited.org](http://www.youngworkersunited.org)
  - [ywu@youngworkersunited.org](mailto:ywu@youngworkersunited.org)
- United 4 Respect
  - [www.united4respect.org](http://www.united4respect.org)

Questions?