San Francisco’s Formula Retail Employee Rights Ordinances

August 6, 2015

Important Dates

November 25, 2014: BOS passed Police Code 33F/33G
January 4, 2015: Effective Date
July 3, 2015: Operative date
July 7, 2015: Amendments passed by BOS
October 3, 2015: End of 90 day grace period

Covered Employers

Planning Code Section 303.1 defines Formula Retail Establishment as a retail or service business with any 2 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; or
6. a trademark or servicemark and 11 or more locations worldwide.

Covered Employers are Formula Retail Establishments with:

- 40 or more locations worldwide; and
- 20 or more employees in San Francisco

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Property Services Contractors

- Janitorial Services and Security Services contractors of covered Formula Retail Establishments are covered by most provisions in 33F and 33G.

- Contracts must include:
  1. A provision requiring the contractor to comply with these laws; and
  2. A copy of these laws
Additional Work for Part-Time Employees

• Before hiring new EEs / contractors / temp agency:
  – Offer additional work to current part-time EEs
  – If employee is “qualified”; and
  – Work is the same or similar to work EE has performed

Additional Work for Part-Time Employees

– Only required to offer hours up to 35 hrs/week
– Offer must be in writing
– Records must be retained for 3 years

Employee Retention

If covered Establishment is sold, Incumbent Employer must:

• Provide Successor with a Retention List on date of execution of transfer document
• Post notice of change within 24 hrs of transfer

Employee Retention

• If covered Establishment is sold, Successor must:
  – Retain EEs (who worked at least 6 mos.) for 90 days. (Does not apply to supervisors or managers.)
  – Retain employees by seniority if fewer employees are needed
  – Provide written notice to retained employees about their rights

Scheduling Requirements

• Before employment, employers must provide an estimate of:
  – Minimum number of shifts/month; and
  – Days and hours of shifts (excludes on-call shifts).

• Employer must consider an employee’s request to modify schedule
  – Employer has sole discretion
  – Employer must notify employee of decision

Scheduling Requirements

• Provide notice of schedules two weeks in advance
  – Post at workplace or transmit electronically
• Keep work schedules & payroll records for 3 yrs.
Predictability Pay

- If schedule is changed with < 7 days notice:
  - 1 hour of pay for each shift change.

- If schedule is changed with < 24 hrs notice:
  - 2 hours of pay if the shift is four hours or less; or
  - 4 hours of pay if the shift is longer than four hours.

Pay for On-Call Schedules

- If an employee is on-call, but is not called in:
  - 2 hours pay if the on-call shift is 4 hours or less,
  - 4 hours pay if the shift exceeded four hours.

On-Call & Predictability Pay Exceptions

No predictability pay is required in these cases:

- 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 Employee cannot work; did not give 7 days’ notice;
- Another EE failed to report to work or was sent home;
- Employer requires EE to work overtime; or
- The EE requests a change in shifts or trades shifts.

Equal Treatment for Part-Time EEs

Equal treatment required for part-time EEs, compared to full-time EEs at the same level
1. Starting hourly wage
2. Access to PTO and unpaid time off; and
3. Eligibility for promotions (w/ qualifications)

Workplace Posting

- Covered Employers are required to post the OLSE’s multilingual Notice informing employees of their rights.

Retaliation Prohibited

- It is illegal for an employer to take adverse action against any person in retaliation for exercising their rights under the Ordinance.
Enforcement

• OLSE enforces the laws
• Any appropriate relief, including but not limited to:
  — payment of lost wages, reinstatement
  — payment of penalties to EEs and the City
• §33F includes:
  — Joint / several liability
  — $500 Admin Fines
• Appeal procedure
• City Attorney may file civil action

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