

LEGISLATIVE DIGEST

[Police Code - Formula Retail Employer Requirements]

Ordinance amending the Police Code to regulate the operation of formula retail establishments, including requiring employers to offer additional hours of work, when available, to current part-time employees, and requiring successor employers to retain employees for 90 days upon a change in control of the business.

Existing Law

Existing City law establishes worker retention requirements for grocery store workers (Police Code Article 33D), certain service employees (Police Code Article 33C), certain City contractors (Administrative Code Chapter 21C), and hospitality industry employers (Police Code Article 33E). There is no existing City law pertaining to retention of formula retail workers.

No existing law requires Formula Retail businesses to offer additional hours of work to current part-time employees before they hire new employees or use a temporary services or staffing agency to perform work for the business.

Amendments to Current Law

Businesses Subject To the Proposed Ordinance

This proposed ordinance applies to Formula Retail Establishments located in the City. The legislation defines the term "Formula Retail Establishment" as a business that engages in retail sales or services that are regulated as a "Formula Retail Use" under the Planning Code. The legislation provides that if the Board of Supervisors amends the Planning Code's definition of "Formula Retail Use," the definition of "Formula Retail Establishment" will also change to reflect that used in the Planning Code for "Formula Retail Use."

Requirement To Offer Additional Hours Of Work To Current Part-time Employees

The ordinance requires Formula Retail employers to first offer to current part-time employees any additional hours of work before hiring new employees or using subcontractors or a temporary services or staffing agency to do work for the Formula Retail business. The employer must make the offer in writing.

The requirement applies to employers when (1) the current workers are qualified to do the work, as reasonably determined by the employer and (2) the work is the same or similar to the

work the employees have performed for the Formula Retail business. The employer is required to offer only the number of hours that the employee requires in order to work 40 hours a week or 8 hours a day.

Requirement To Retain Employees For 90 Days Upon Sale Or Other Transfer of a Formula Retail Establishment

If a Formula Retail business changes ownership, the new Formula Retail employer (“Successor Employer”) must retain for 90 days the employees who worked for the old Formula Retail employer (“Incumbent Employer”) for at least six months (other than supervisory, managerial, or confidential employees).

The ordinance requires the Incumbent and Successor Employers to do the following:

- When the transfer document (which effects the sale or other transfer of ownership) between the Incumbent and Successor Employers is fully executed, the Incumbent Employer must give the Successor Employer a “Retention List,” identifying the Incumbent Employer’s employees and their date of hire, rate of pay, average number of hours worked in the previous six months, employment occupation classification, and contact information.
- The Incumbent and Successor Employers (as applicable, depending on the ownership at the time that the duty arises) must post notice of the transfer of ownership at the affected location for 30 days and provide notice of the employees’ rights under the ordinance with their first paycheck after the transfer.
- The Successor Employer must make a written offer of employment to the individuals on the Retention List under the same terms of employment with respect to job classification, compensation and number of work hours that governed those individuals and the Incumbent Employer, and as otherwise required by law.
- The Successor Employer (1) must retain the employees for 90 days, (2) may not discharge any without cause during the 90 days, and (3) may not employ any other individual for the job classification for a period of time that begins on the date of the transfer and that ends 90 days after the Successor Employers opens the business to the public.
- The obligation to hire employees from the Retention List applies whether the Successor Employer operates the business in the same location or relocates it elsewhere in San Francisco.
- The obligation to hire employees from the Retention List remains in effect during any delay in the opening of the business by the Successor Employer because of

remodeling, relocating the business, or other reason, but terminates three years from the date of the transfer.

- If the Successor Employer does not need to employ all the individuals on the Retention List, it shall retain those needed based on the date of hire by the Incumbent Employer or under an applicable collective bargaining agreement.

Requirements For Employers To Post, Maintain, And Make Records Available To The City

- Employers must post notice when a Formula Retail business is sold or otherwise transferred to another employer and must provide notice to employees of their rights under the ordinance with their first paycheck after the transfer
- Employers must post a notice of employees' rights under the Article at the workplace
- Employers must retain for four years a copy of the written offer of additional hours made to part-time employees
- Successor Employers must retain a copy of offers of employment made to the individuals on the Retention List after the sale or transfer of a business for at least four years
- Successor Employers must retain the Retention List for at least four years
- Employers must give the City access to employment and payroll records relating to their obligations under the ordinance, with appropriate notice by the City and at a mutually agreeable time

Anti-Retaliation Prohibited

It shall be unlawful for a Formula Retail Employer or any other party to take adverse action against any person in retaliation for exercising their rights under the ordinance.

Enforcement

The Office of Labor Standards Enforcement (the "Agency") is responsible for implementing and enforcing the ordinance.

Agency Determination of Violation. The Agency may investigate possible violations of the ordinance. If after investigating the matter and providing the employer the opportunity to respond to the allegations, the Agency finds that an employer has violated the ordinance, the Agency may issue a Notice of Determination and order the employer to remedy the violation. Among the remedies the Agency may order are requiring the employer who has failed to offer additional hours of work to part-time employees to do so, reinstatement of employment, payment of lost wages, and payment of an additional sum as an administrative penalty up to the amount of the award for lost wages.

An employer determined in violation of the ordinance by the Agency may appeal that decision and the appeal will be heard by a hearing officer appointed by the Controller's Office.

Administrative Citations. The Agency may impose an administrative fine for specific violations of the ordinance of up to \$500 per Eligible Employees employed by the employer, including the failure of the old Employer to provide the new employer with the Retention List that identifies current employees entitled to the 90-day retention period, the failure of Employers to provide notice of a transfer of the business, the failure to post notice of workers' rights under the ordinance, the failure to make an offer of additional available hours to part-time employees in writing, and the failure to make employment and payroll records available to the Agency so that it may monitor and enforce the ordinance.

Civil Court Enforcement. The City Attorney, any person aggrieved by a violation of the ordinance, any entity a member of which is aggrieved by a violation, or any other person or entity acting on behalf of the public, may bring a civil action in court against an Employer for violating the ordinance.

Waiver Under Collective Bargain Agreement. The requirements of the ordinance may be waived by the explicit provisions of a collective bargaining agreement.