



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

November 12, 2014

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 141024 [Police Code - Fair Scheduling and Treatment of Formula Retail Employees]

Small Business Commission Recommendation: **Recommend the Budget and Finance Committee not to pass the item out of committee and continue for a minimum of two week (less time if issues are resolved), to work with the business community on points of concern with the legislation.**

Dear Ms. Calvillo:

On November 10, 2014, the Small Business Commission (SBC) voted unanimously (5-0) on BOS File No. 141024 to recommend the Budget and Finance Committee not pass this ordinance out of committee and to continue the item for a minimum of two weeks to work with the business community on points of concern with the legislation.

The Small Business Commission requests that Supervisor Chiu and his staff work with the key business stakeholders to resolve the points of concern, several of which are noted in this letter. The Small Business Commission finds this request to delay action for a week or two is a reasonable request since the business community has stated that they want to work together to resolve their concerns. The business community has successfully demonstrated their ability to work together with the recent ground breaking Fair Chance Ordinance, the Family Friendly Ordinance and the Minimum Wage Ordinance.

Over the past several years the City has made a conscious effort to align similar regulatory requirements when establishing new employer mandates. Not only does this accomplish the City's goal to streamline and create efficiencies, it makes it easier for OLSE to track and enforce, and helps to ensure a greater level of compliance from the employer.

Requested changes to BOS File No. 141024:

1. Align with the Family Friendly Workplace Ordinance (FFWO) and Fair Chance Ordinance (FFO) in the following areas:
 - a. Section 3300G.7: change the required record keeping from 4 years to 3 years.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

- b. Simplify record keeping and reporting requirements as was done with FFWO.
 - c. Remove the private right to action, as was done with FFWO and FCO. It is fine to allow the City to bring action against an employer.
 - d. Ensure the administrative enforcement by OLSE is clear, straight-forward and objective as in the FFWO and FCO.
2. The revised Formula Retail regulations have not pass out of the Board of Supervisors or signed into law. The new regulations will include more business sectors currently not classified as Formula Retail and many of these newly classified businesses are not the businesses this legislation is attempting to address. The Small Business Commission's first recommendation is for the Board of Supervisors not to hear this legislation until the Formula Retail regulations become law. As this is unlikely, the Small Business Commission then recommends, as with the Family Friendly Ordinance, for the first 12 months OLSE will issue warnings and notices to correct the violations and not assess penalties.
 3. The definition of part-time worker is consistent with the Affordable Care Act (1 to 29 hours). The [ACA defines](#) a full-time worker as 30 or more.
 4. Amend SEC 3300G.4 (a) (1) to read "Prior to the start of employment, an Employer shall provide a new Employee with a starting schedule."
 5. Amend the requirement of the employer to post the employee schedule from 14 days to 10 days and for the restaurant industry 7 days.

The Commission appreciates an employee's interest in having as much scheduling notification a possible. Many of the businesses cover by this legislation have a large number of employees working at one location. It is very common for employees to request time off or schedule changes with less than a 14 day notice. Thus, a schedule that is produced 14 days out will likely get changed or adjusted several times over. A 10/7 day notice is a good balance and will reduce the number of times and employee will receive a modified schedule.
 6. Amend the predictability pay from 7 day notice to a 3 day notice, except for restaurant and catering industries, which should be 24 hours.

The proposed schedule of predictability pay is problematic for the Small Business Commission. The Commission acknowledges the goal of predictability pay penalties and appreciates that an employer will not be penalize for granting an employee's schedule change request with 7 days or less notice. The Commission knows the reality of operating a business. It knows the reality of the frequency of having to change and adjust schedules due to employee initiated requests. For businesses with a high number of employees at single location, the majority of the employees are not going to be in the position to know if a schedule is being changed for one of the approved reasons stated in SEC3300G.4 (e)(4) and (5) or not. This is also a key reason for the request to remove the



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

private right to action by an employee and to amend the predictability pay 7 days to 3 days/ 24 hour notice. This change will reduce the number of challenges an employee might bring to the employer and OLSE that are legitimate schedule changes.

7. Add an exception under SEC 3300G.4 (e) for “on-call shifts” that are hired specifically for or employee request “on-call” status.

These types of shifts are important for performance artist, students, and individuals that DO want the flexibility of a less predictable schedule.

For simplicity, the Small Business Commission recommends merging both pieces of legislation into one.

The Small Business Commission’s above list of recommendations may not be inclusive of all the recommendations for consideration the business community may have. Therefore, the Small Business Commission recommends Supervisor Chiu and his staff work with the business community to ensure all matters that need consideration are dealt with and mitigated.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

- cc. Supervisor David, President, Board of Supervisors
Supervisor Eric Mar, Board of Supervisors
Board of Supervisors
Nicole Wheaton, Mayor’s Office
Todd Rufo, Director Office of Economic and Workforce Development
Linda Wong, Budget and Finance Committee Clerk



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

November 13, 2014: Addendum

At the November 12, 2014 Budget and Finance Committee hearing, the Office of Small Business wants to acknowledge two changes to what is noted above:

1. Item 1(a) has been addressed through a proposed amendment made at Committee.
2. Item 2 is primarily addressed in giving OLSE 6 months to draft regulations, administrative procedures and conduct outreach to the affected business followed by a 6 month grace period before enforcement begins.

A more targeted definition of a Formula Retailer employer still needs to be given consideration. The SF Chamber has a recommended definition that the Small Business Commission will support as it falls within the scope of the Commission's recommendations.

At this meeting the Budget and Finance Committee accepted (2-1) an amendment to change the definition of "Employer" by eliminating the 20 employee threshold. The Small Business Commission does not support this. Thank you Supervisor Chiu for voting not to support the amendment.

Formula Retail franchisees have a unique place in small business world. At the OSB Assistance Center we regularly see individuals who want to open a franchisee. While the business product, branding and marketing are formula retail. These individuals own and operate their businesses the same as a small business. These individuals require the same level of counseling and information as a non-formula retail small business. Franchisees have to conduct the site selection, lease negotiations and handle the conditional use process on their own, just like a small business. They can set their own wages, handle their own scheduling, and often have to retain their own HR and legal services. It is not uncommon for a franchisee seeking business assistance to be an immigrant wanting to own a franchise for the sole purpose of supporting their family.

Therefore, a direct request is being made to the Budget and Finance Committee at its Monday, November 17, 2014 special meeting to delete the proposed amendment and return the definition of "Employer" to the first drafted definition. In the event this is not done then it is requested of the Full Board not to accept the amendment.

The Committee amended File No 141024 to include Property Services Contractors that have contract with Formula Retail operators. The Commission did not support this inclusion with Supervisor Mar's legislation, and will not support with this legislation. These businesses have not been outreach to. More importantly this section is attempting to regulate business to business contractual relationships. The Commission is strongly recommends against the precedent this sets