



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: May 17, 2016

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Study Session: Discussion of San Francisco Formula Retail Employee Rights Ordinances

REQUESTED ACTION

Staff requests that the City Council review the attached information from San Francisco and provide direction to staff on whether to take the next steps in the preparation of an Employee Scheduling Ordinance for Emeryville.

BACKGROUND

On several occasions this year, the Mayor and City Council have indicated that consideration of an Employee Scheduling Ordinance was a high priority: at the special goal-setting meeting on January 23, in the Mayor's State of the City Address on February 16, and when the City Council reviewed the City Attorney's work program on March 15. To staff's knowledge, San Francisco is the only city in the United States that has adopted such an ordinance. Therefore, staff has looked to San Francisco as an example of how such an ordinance could be structured.

In addition to San Francisco's ordinance, related legislation has been proposed or enacted in various cities, as well as at the state and federal levels. The "Hours and Scheduling Stability Act of 2015" has been proposed in the District of Columbia, the Albuquerque "Fair Workweek Act" was proposed but was not enacted due to lack of support, and the Seattle-Tacoma Minimum Wage Ordinance includes a requirement for employers to offer hours to current part-time employees before hiring additional part-time staff. In 2014, Berkeley voters passed Measure Q, the "Right to Request" Flexible Worktime Initiative, which allows workers to request part-time work. At the state level, employee scheduling legislation has been proposed in California, Connecticut, New Jersey, Indiana, Maryland, Rhode Island, Oregon, New York, Illinois, Minnesota, Massachusetts, and Michigan. In addition, California has a labor law requiring "Reporting time pay" which guarantees partial compensation to employees who report to work but are not given the expected number of hours. At the federal level, the "Schedules That Work Act" was introduced in the Senate in July 2015 and referred to committee; it has not yet been adopted.

DISCUSSION

San Francisco's Ordinance

San Francisco's Formula Retail Employee Rights Ordinances, or FREROs, include the "Hours and Retention Protections for Formula Retail Employees Ordinance" (San Francisco Police Code Article 33F) and the "Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance" (San Francisco Police Code Article 33G). These ordinances were passed by the San Francisco Board of Supervisors on November 25, 2014, and took effect on July 3, 2015. They are enforced by the San Francisco Office of Labor Standards Enforcement, which issued final Rules for the FREROs on January 29, 2016. The Final Rules took effect on March 1, 2016.

In brief, the San Francisco Formula Retail Employee Rights Ordinances provide as follows:

- **Covered Employers:** The laws apply to "Formula Retail Establishments" (or chain stores) with at least 40 formula retail establishments worldwide and 20 or more employees in San Francisco as well as their janitorial and security contractors. See San Francisco Police Code Sections 3300F.2 and 3300G.3.
- **Offering Additional Work to Part-time Employees:** Covered employers must offer any extra work hours to current qualified part-time employees in writing before hiring new employees or using contractors or staffing agencies to perform additional work. See San Francisco Police Code Section 3300F.3.
- **Employee Retention:** If a covered Formula Retail Establishment is sold, the Successor Employer must retain, for 90 days, eligible employees who worked for the former employer for at least six months prior to the sale. The employer must post a notice of the "change in control" and provide employees with a notice about their rights. See San Francisco Police Code Sections 3300F.4-3300F.7.
- **Scheduling:**
 - **Initial Estimate of Work Schedule** - Covered 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. See San Francisco Police Code Subsection 3300G.4(a).
 - **Two Weeks' Notice of Work Schedules** - Employers must provide employees with their schedules two weeks in advance. Schedules may be posted in the workplace or provided electronically, as long as employees are given access to the electronic schedules at work. See San Francisco Police Code Subsection 3300G.4(c).
 - **Predictability Pay for Schedule Changes** - If changes are made to an employee's schedule with less than seven days' notice, the employer must pay the employee a premium of 1 to 4 hours of pay at the employee's regular hourly rate (depending on

the amount of notice and the length of the shift). See San Francisco Police Code Subsection 3300G.4(c).

- **Pay for on Call Shifts** - If an employee is required to be “on-call,” but is not called in to work the employer must pay the employee a premium of 2 to 4 hours of pay at the employee's regular hourly rate (depending on the amount of notice and the length of the shift). See San Francisco Police Code Subsection 3300G.4(d).
- **Exceptions** - Employers do not have to provide “predictability pay” or payment for on-call shifts if any of the following conditions apply:
 - Operations cannot begin or continue due to threats to Employees or property;
 - Operations cannot begin or continue because public utilities fail;
 - Operations cannot begin or continue due to an Act of God or other cause not within the Employer's control (such as an earthquake);
 - Another Employee previously scheduled to work that shift is unable to work and did not provide at least seven days' notice;
 - Another Employee failed to report to work or was sent home;
 - The Employer requires the Employee to work overtime; or
 - The Employee trades shifts with another Employee or requests a change in shifts.

See San Francisco Police Code Subsection 3300G.4(e).

- **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. Hourly wage differentials are permissible if they are based on reasons other than part-time status, such as seniority or merit systems. Further, employees' time off allotments may be prorated based on hours worked. See San Francisco Police Code Section 3300G.5.
- **Janitorial and Security Contractors:** Janitorial and security contractors of Formula Retail Establishments covered by these Ordinances must comply with most of the provisions of San Francisco Police Code Articles 33 F and G, and Formula Retail Establishments must notify their contractors of these requirements. See San Francisco Police Code Sections 3300F.20 and 3300F.19.
- **Employer Notice:** Covered Formula Retail Establishments are required to post a notice at the workplace informing covered employees of their rights under these laws. See San Francisco Police Code Sections 3300F.7 and 3300G.6.

- ***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. See San Francisco Police Code Sections 3300F.9 and 3300G.9.

The following documents from San Francisco are attached for the Council's review and consideration:

- Formula Retail Employee Rights Ordinances Fact Sheet.
- Formula Retail Employee Rights Ordinances FAQs.
- Formula Retail Employee Rights Notice. (Covered employers must post this Notice in a conspicuous place at any workplace or job site where any of its covered employees works.)
- Full text of San Francisco Formula Retail Employee Rights Ordinances (San Francisco Police Code Article 33F, "Hours and Retention Protections for Formula Retail Employees", and San Francisco Police Code Article 33G, "Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance".)
- Rules for the Formula Retail Employee Rights Ordinances.

Proposed Process

If the Council so directs, staff proposes the following process:

- Further analysis with a goal to develop a draft ordinance and determine enforcement costs and staffing requirements;
- Community meetings with key stakeholders including workers, worker advocate organizations, employers, and other interested parties;
- Review by Economic Development Advisory Committee and any other relevant City committees; and
- Additional City Council study sessions and public hearings.

DISCUSSION QUESTIONS

Staff seeks City Council direction on the following questions related to an Employee Scheduling Ordinance:

1. Does the Council wish to pursue the development of such an ordinance for Emeryville?
2. If so, which components of the San Francisco Formula Retail Employee Rights Ordinances does the Council wish to include in an Emeryville ordinance?

3. Should the ordinance apply only to Formula Retail Establishments, as defined by San Francisco, only to large employers as defined by Emeryville's Minimum Wage Ordinance, to all employers, or to some other subset of employers?
4. Does the Council agree with the proposed process outlined above?
5. What is the relative priority of an Employee Scheduling Ordinance compared to other Council priorities? These include:
 - Medical Marijuana (study session held March 15; regulations under study)
 - Tenant Protections (study session tentatively scheduled for June 21)
 - Short-term Rentals (study session tentatively scheduled for June 7)
 - Small Business Assistance (joint meeting with Planning Commission pending)
 - Sign Regulations (Planning Commission study session pending)
 - Noise Regulations (study session scheduled for May 3)
 - Smoking Ordinance (study session tentatively scheduled for June 21)
 - Review of Impacts of Minimum Wage Ordinance (scheduled for September 6)

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE BY:**



Carolyn Lehr, City Manager

Attachments:

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5. Rules for the San Francisco Formula Retail Employee Rights Ordinances.