

HERE IS HOW TO REACT TO THE RULES COMING RETAILERS' WAY

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A number of state and local laws promising additional rights for retail employees are slated to go into effect in 2015, significantly changing the employment law landscape for retailers. If President Obama has his way, the federal government will not be far behind, with paid medical leave near the top of his wish list. Complying with the wide assortment of laws affecting the workplace will increase the compliance challenge facing employers in the retail sector, especially those with multistate operations.

Retail Worker Bill of Rights

San Francisco is once again at the forefront of aggressive, worker-friendly efforts by cities to curtail what it believes to be abuses by retailers, particularly with respect to scheduling and part-time employment. The San Francisco ordinance goes into effect in July. For "formula retail establishments," essentially chain retailers with at least 20 locations worldwide and at least 20 employees in San Francisco, this means some substantial changes.

Additional Hours for Existing Part-Timers

The ordinance requires that covered retailers first offer extra hours to existing part-time employees before hiring additional workers or turning to contractors or staffing agencies. The offers must be in writing and retained by the retail employer for three years. Once part-time employees are scheduled to work 35 hours per week, no additional written offers of extra work are required.

Notice of Schedule Change and Predictability Penalty Wages

In order to provide retail workers more stability and certainty

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regarding their work schedules, the San Francisco law requires that retail employers provide work schedules two weeks in advance, and retailers must give employees sufficient notice of schedule changes. If a retailer provides more than 24 hours' notice, but less than seven days' warning, the employer must pay the employee an extra hour of pay for each changed shift. If the employee receives word of a schedule change with less than 24 hours' notice, he is to receive "penalty pay" of two hours of wages if scheduled to work a shift of four hours or less, and four hours of penalty wages if the new shift is longer than four hours.

There are exceptions though. Retailers do not have to pay penalty wages when attempting to cover for another employee who was scheduled to work but fails to provide seven days' notice of an absence due to illness, vacation or other approved time off. Also, no penalty wages are due when the schedule change is due to another employee being sent home as a disciplinary measure. Finally, an employee who requests a last-minute schedule change or voluntarily trades shifts with another employee is not entitled to penalty wages.

Initial Estimate of Minimum Weekly Hours

Before a retail employee starts working, covered retail employers in San Francisco are required to make a good faith estimate, in writing, of the minimum number of shifts per month the employee can be expected to work and the days and hours of those shifts.

On-Call Pay

Retail workers who are on-call but are not actually called in to work must be paid for two hours if the on-call shift lasts four or fewer hours and four hours if the shift lasts longer than four hours.

Full-Time Employees = Part-Time Employees

Under the ordinance, covered San Francisco retailers may not distinguish between full-time and part-time employees with respect to starting hourly rate, access to time off and promotion eligibility.

Paid Sick Leave

It's not just San Francisco making headlines for new protections for employees. Even the federal government is contemplating new rules to provide workers paid time off for illness. Currently, most larger employers are covered by the

Family and Medical Leave Act, which mandates up to 12 weeks of unpaid leave for serious health situations, pregnancy and other circumstances keeping employees away from work.

New rules contemplated by the Obama administration would require employers to provide up to seven days of paid sick leave to employees. The Healthy Families Act would provide that employees earn one hour of sick leave for every 30 hours they work, and the time off could be used for an employee's own illness or a family member's.

This is very similar to the new paid leave statute in Massachusetts, which goes into effect this year. Other features of the new law sure to give employers the shakes include:

- No medical verification of absences are permitted until the employee has been absent for 24 consecutively scheduled work hours.
- Employers with as few as 11 employees, including part-timers and temps, are covered.

Voters in Massachusetts approved its new paid leave law, suggesting that ballot initiatives may be the wave of the future for these employee-protection statutes.

The U.S. is actually one of only two nations without a law mandating paid leave for employees of private companies (the other is Papua New Guinea). While it may be a while before a paid leave law makes its way through a GOP-held Congress, it is likely to happen at some point. In the meantime, retailers can be sure that local and state governments will fill in the gap. Currently, in addition to Massachusetts, some form of paid sick leave is required in Connecticut, Washington D.C., California, New York City, Seattle, Eugene, Oregon, and various municipalities in New Jersey.

Some retailers already provide paid sick leave to employees, but many do not. Unless there is a requirement to offer vacation to employees in a particular jurisdiction, paid time off programs that apply regardless of the reason for absence can satisfy a paid sick leave requirement as long as a sufficient number of paid days/hours are made available.

Minimum Wage

Retailers and fast food operators are aware that local governments have been at the forefront of so-called living wage initiatives — city ordinances and state laws that increase the minimum wage in a community beyond the federally mandated \$7.25 per hour. Last year, Seattle announced it was increasing its minimum wage to \$15 per hour. Larger employers will get to \$15 in three years, while smaller employers will have five years to implement a \$15 minimum hourly wage.

Seattle is by no means the only local government heading in this direction. Indeed, in 2015, a majority of states will have minimum wages higher than the federal government's, meaning it is no longer possible for multistate retailers to derive any comfort from the knowledge that it pays each of its employees at least \$7.25 per hour.

Again, the Republican-controlled Congress is likely to resist any increase to the minimum wage under the theory that minimum wage hikes cost jobs. And business groups are sure to lobby against raising the federal minimum wage. But recent studies of unemployment rates following increases to the minimum wage at the state and local level suggest that the fear may be overstated. In fact, one recent study showed that about half the time, an increase in the minimum wage has been followed by a decrease in the unemployment rate. Of course, any number of factors apart from minimum wage impact the unemployment rate, and without further study, no definitive conclusion can be reached.

University of Massachusetts-Amherst economists Robert Pollin and Jeannette Wicks-Lim recently released a paper in which they attempted to demonstrate how fast food operators could absorb a \$15 per hour minimum wage with no job loss and no impact on profits. Quicker than you can say "voodoo economics," the researchers concluded. They claim that fast-food businesses could cover the increased payroll costs through reduced turnover, higher prices and sales growth.

Whether the good professors' claims are rosy optimism, partisan claptrap or sound economic theory, a doubling of the minimum wage, whether by a state or the federal government, would significantly change the workplace landscape for retailers.

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