

A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment for Formula Retail Employees Ordinance

DIFFICULT CHALLENGES FOR BOTH EMPLOYEES AND EMPLOYERS IN IMPLEMENTATION

BRIEF SUMMARY

- *The Hatamiya Group* was retained by the California Retailers Association to provide an independent and objective analysis of the impacts of the *Predictive Scheduling and Fair Treatment for Formula Retail Employees* ordinance in the City and County of San Francisco, California.
- For purposes of this analysis, we examined the practical impacts of implementation of the Predictive Scheduling Ordinance upon both Employees and Employers.

CONCLUSIONS AND MAJOR FINDINGS

- The San Francisco Predictive Scheduling Ordinance has resulted in difficult challenges for both Employees and Employers.
- Based upon our observations and analysis of the Ordinance's effects, there is a greater need for a more balanced approach that provides both predictability for employees in their schedules, but also more flexibility to meet the current lifestyle obligations of both Part-Time and Full-Time employees as well as the ever-changing retail competitive demands for Employers.

IMPACTS UPON EMPLOYEES

- **Employees often do not know their own availability two weeks in advance and are frustrated with not being able to change their schedules when needed.**
- **Employees have asked for extra hours and the Employer cannot accommodate the requests.**

- The Ordinance, and the narrow definition of “Employer-initiated,” severely limits the posting of additional hours as they become available and Employee pick up of additional hours cannot be done within 7 days of the hours available, further limiting the flexibility and benefits of adding hours.
- The onus is further placed upon the Employee to find replacements if they cannot meet the 14-day advance schedule.
- The size of the Employer and number of Employees also provides additional challenges as fewer Employees limit further the flexibility to change work schedules or exchange additional hours.
- Employees have also questioned the need for the change in scheduling requirements, the lack of communication, and the ultimate benefit they derive from the implementation of the Predictive Scheduling Ordinance.

IMPACTS UPON EMPLOYERS

- One of the most important impacts upon Employers has been the change in store culture, away from open communication to a more scripted dialogue due to the limitations on communications caused by the Ordinance’s ambiguous and unclear language, especially as it relates to “Employer-initiated” actions. Rather than incur the potential for “coercive” action and thereby enforcement of penalties, Employers would choose to leave a work shift unfilled.
- In cases of employees on medical leaves of absence, Employers have relied to their detriment on employee doctor notes stating expected return to work dates in setting the work schedules. Often doctors extend return to work dates at the last minute, and in those cases such employees must be removed from the schedule sometimes on the day they are scheduled to work.
- The requirement of two week schedules also negatively impacts quality of new hire training. Rather than scheduling training with the most appropriate staff members, Employers have had to pair up new hires with whoever is available.

Employees who feel they are not properly trained sometimes leave employment soon after being hired.

- **In the retail environment, labor hours are allocated and schedules written based on anticipated sales volume and consumer demand. Under the Ordinance, schedules cannot be changed to meet unexpected consumer demand that occurs within the 14-day window without incurring counterintuitive penalties.**
- **The expense of Predictability Pay penalties is also seen as overly punitive and counterproductive. Severe penalties result in Employers making business decisions to avoid situations that could trigger Predictability Pay. The end result is that last minute unfilled work hours continue to go unfilled and extra hours are not available to those Employees that desire them.**

Lon Hatamiya is the President and Chief Executive Officer of the *Hatamiya Group*, an economics consulting firm based in Davis, California. Lon specializes in international, national, and regional economic analysis, with an emphasis on retail, technology, food, and agriculture. He has extensive government management experience serving at both the state and federal levels. He was the first Asian American cabinet member in the history of the state of California, serving as Secretary of the California Technology, Trade and Commerce Agency, when he was appointed by Governor Gray Davis in 1999. He was also the first Asian American Administrator at the United States Department of Agriculture, where he headed up the Agricultural Marketing Service and then the Foreign Agricultural Service under President Bill Clinton. Mr. Hatamiya was a Director at Navigant Consulting and LECG, practiced law with the international firm of Orrick, Herrington and Sutcliffe, and worked for The Procter and Gamble Company in Cincinnati, Ohio, The Sony Corporation in Tokyo, Japan, and H.B. Orchards, Inc. in Marysville, California.

Mr. Hatamiya graduated from Harvard College with an A.B. in Economics. He also obtained his JD and MBA degrees from UCLA. In addition, he is native of Marysville, California, where he grew up on his three-generation family farm.

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Bill on schedules is bad for business

BY LON HATAMIYA, SPECIAL TO THE BEE

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A recently introduced bill has reignited the debate over scheduling practices for retail employees in California. [Senate Bill 878](#), authored by Sen. Connie Leyva of Chino, lays out a dangerous framework that will stifle large and small businesses throughout the state.

Astonishingly, the proposed legislation goes even further than an ordinance recently implemented in San Francisco to limit how businesses can modify employee schedules.

The San Francisco policy requires that workers get two weeks' notice of work schedules and receive compensation for schedule changes made on less than seven days' notice.

I was commissioned by the California Retailers Association to look at the early impacts, and the results are troubling. Talking to retail employees, it became clear that a scheduling problem did not exist before the new policy. I'm baffled why local and state officials are proposing a law to fix it.

I did repeatedly hear from workers, however, that the new San Francisco ordinance eliminates scheduling flexibility, transfers the burden of last-minute changes to the employee to find a replacement, decreases the number of extra hours available to employees who want them and discourages open communication between employee and employer. Employers expressed similar sentiments, saying they would rather have a shift go unfilled than face penalties for coercing scheduling changes.

Customers are feeling the impact as well. Employers are unable to respond to unexpected demand and as a result, service takes longer or isn't available.

Despite these problems, SB 878 would not only cover large retailers, but also small stores. It would deny an employer the opportunity to honor an employee's request to come in late or leave early, or trade shifts with another worker.

AB 878 would also impose outrageous penalties significantly beyond those in San Francisco and would allow a private right of action for any violation, inevitably creating potential for a flood of frivolous lawsuits. For example, a minor violation for an employee working 10 minutes over their shift would result in a massive fine and the right for legal action against the business. Clearly, AB 878 goes too far.

Unlike many bills before the Legislature, there is a true test case. In San Francisco, the results were eye-opening. I hope it highlights for lawmakers the importance of doing their researching before proposing policies that are not only unnecessary, but create a problem where one did not exist in the first place.

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