

CLIENT ALERT

## San Francisco Passes Second Vote On Paid Parental Leave Ordinance

APRIL 15, 2016

On April 12, 2015, for the second time, the San Francisco Board of Supervisors unanimously approved the Paid Parental Leave Ordinance (Ordinance). Mayor Edwin Lee (D) has said he will sign the legislation within the next week, making San Francisco the first city in the nation to require employers to provide employees with fully-paid parental leave. The final version of the Ordinance includes the following provisions:

### Covered Employers

As of **January 1, 2017**, the Ordinance will apply to all employers with **50** or more employees, regardless of location. As of **July 1, 2017**, covered employers will include all employers with **35** or more employees, regardless of location. Finally, commencing on **January 1, 2018**, all employers with **20** or more employees, regardless of location, will be covered.

### Covered Employees

The Ordinance covers all employees, including part-time and temporary employees, who (i) have worked for the employer for at least **180 days** (the measure was amended from the original 90-day minimum); (ii) perform at least **eight hours** of work per week for that employer within the city limits; (iii) work at least **40 percent** of his or her total weekly hours within the city limits; and (iv) are eligible to receive paid family leave compensation under the California Paid Family Leave law for baby bonding purposes. The Ordinance also applies to employees covered by a collective bargaining agreement unless either (i) the agreement expressly waives the Ordinance in clear and unambiguous terms, or (ii) the agreement was entered into before the Ordinance's effective date.

### Employer Obligations

The Ordinance was enacted as a supplement to the California Paid Family Leave, which permits employees who contribute to the California State Disability Insurance fund to take up to **six weeks** of leave during a one-year period, with 55 percent partial wage replacement. Employers are required to pay employees supplemental compensation –

the remaining **45 percent** of their lost wages – during the covered leave period. Covered employers are required to supplement pay so that it does not exceed 100 percent of the employee’s gross weekly wage. Based on state legislation signed by Governor Jerry Brown this week (A.B. 908), starting on January 1, 2018, the wage replacement rate paid under the California Paid Family Leave program will increase from 55 percent to 60 percent for employees who earn more than 33 percent of the California average weekly wage. The rate will increase to 70 percent for employees who make up to 33 percent of the average weekly wage in California. Once the higher Paid Family Leave rates take effect, the net payment obligation of San Francisco employers will fall by the corresponding amounts.

Employers may require employees to first use accrued but unused vacation leave to meet these pay obligations, but the use of vacation leave for this purpose is limited to two weeks. In addition, employers are required to retain records documenting supplemental compensation paid to employees for a period of three years.

Additionally, the Ordinance requires employers to provide employees with notice of their right to paid parental leave, and to post such notice in conspicuous workplace locations in English, Spanish, Chinese, and any language spoken by at least five percent of the workforce.

The Ordinance also prohibits employers from discriminating or retaliating against an employee who uses or attempts to use paid parental leave. Any violation of the Ordinance may result in civil and administrative penalties, and remedies to the aggrieved employee, including lost wages and benefits, injunctive relief, liquidated damages, and attorneys’ fees and costs.

The full text of the Ordinance can be found [here](#). Employers are encouraged to review the Ordinance, as well as their policies and procedures to ensure compliance with the Ordinance prior to its effective date.

For more information regarding changes to the California Paid Family Leave program, see our briefing [here](#).

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