

BOARD of SUPERVISORS



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M E M O R A N D U M

TO: Regina Dick-Endrizzi
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk
Youth, Young Adult, and Families Committee

DATE: December 27, 2021

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Youth, Young Adult, and Families Committee

The Board of Supervisors' Youth, Young Adult, and Families Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation.

File No. 211296

Ordinance amending the Administrative Code to provide under the Family Friendly Ordinance that Employees shall be permitted a Flexible or Predictable Working Arrangement unless such an arrangement would cause an Employer undue hardship; requiring Employers to engage in an interactive process to find a mutually agreeable Flexible or Predictable Working Arrangement; strengthening enforcement of the Ordinance; and making other changes.

Please return this cover sheet with the Commission's response to Erica Major, Youth, Young Adult, and Families Clerk, by email to: erica.major@sfgov.org.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

1 [Administrative Code - Amending the Family Friendly Workplace Ordinance]

2
3 **Ordinance amending the Administrative Code to provide under the Family Friendly**
4 **Ordinance that Employees shall be permitted a Flexible or Predictable Working**
5 **Arrangement unless such an arrangement would cause an Employer undue hardship;**
6 **requiring Employers to engage in an interactive process to find a mutually agreeable**
7 **Flexible or Predictable Working Arrangement; strengthening enforcement of the**
8 **Ordinance; and making other changes.**

9
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Chapter 12Z of the Administrative Code is hereby amended by revising
18 Sections 12Z.2 through 12Z.7 and Section 12Z.10, to read as follows:

19 **SEC. 12Z.2. FINDINGS.**

20 ~~I-(a)~~ Over the ~~last past~~ few decades, the demographics of the nation's workforce and
21 the understanding of family structures ~~of the nation's families~~ have undergone and continue to
22 undergo significant changes. ~~As detailed below, t~~These changes include an increased number of
23 women in the workforce; fewer households with children that have at least one parent ~~staying~~
24 at home full-time; ~~and~~ more single-parent households; increased caregiving responsibilities for
both children and older adults; and an expansion of the understanding of what comprises a family unit.

25 As a result of these and other changes, the demands placed on workers with family

1 responsibilities are greater and more complex today than ~~they were in an earlier era~~ ever before.
2 The global COVID-19 pandemic has placed great strains on caregivers in families, with the impacts
3 felt most dramatically among economically and socially vulnerable populations. As in every
4 American city, San Francisco's workforce and families have experienced these changes.

5 2-(b) A marked change in the workforce, and consequently in families, is the large
6 increase in numbers of women who now work outside the home. In 1960, ~~the wife~~ a married
7 woman was employed in approximately 26% ~~percent~~ of families. ~~In April~~ By 2013, when this
8 Chapter 12Z was enacted, in approximately 68% ~~percent~~ of families, married mothers of minor
9 children worked outside the home. In 2020, approximately 69% of married mothers of minor
10 children worked outside the home. ~~3. Another marked change from an earlier era is that now far~~
11 ~~fewer households have a parent who does not work outside the home. Nationally, more than seventy~~
12 ~~percent of children are raised in households that are headed by either a working single parent or two~~
13 ~~working parents. In 1975, a little more than a third of households with married parents and children~~
14 ~~had both parents in the workforce. Now, the figure is approximately two thirds. In San Francisco in~~
15 ~~2010, approximately eighty percent of parents living with at least one child under the age of five were~~
16 ~~in the workforce.~~ 4. The number of single-parent households ~~also~~ has increased substantially,
17 more than doubling over the last ~~fifty~~ 50 years. Today, ~~at least 15-20~~ approximately 25% percent
18 of households are single-parent. Approximately half of all births to women under age 30 are
19 to single mothers. As a result of these changes in labor force participation and family structures, far
20 fewer households with children have a parent who does not work outside the home.

21 5-(c) Americans are living longer than ~~they ever did~~ before, and many families have
22 direct caregiving responsibilities for elderly parents or other older relatives. Family members
23 serving this caregiving role face the same work/family pressures as parents with minor
24 children, and when they also have caregiving responsibilities for minor children, their family
25 burdens in effect are compounded. Nationally, more than half of persons who provide unpaid

1 care to an adult or to a child with special needs are employed outside the home, with the large
2 majority of those employees working full time. Approximately 32,000 San Franciscans who
3 work outside the home live with family members 65 years and older. Increasingly, caregivers
4 must care for both their own children and adult family members at the same time—approximately 11
5 million caregivers known as “sandwich caregivers” care for both a child and an adult family member.

6 6-(d) Many employees who live outside city centers have lengthy commutes to their
7 jobs. Traffic patterns during rush hour elongate those commutes. At the same time, some
8 employees, especially those in low-wage jobs, have difficulty reaching their workplaces
9 through public transportation during off-peak shifts that start in the evening or early morning.
10 Commutes of long duration leave less time for employees to balance work and caregiving
11 responsibilities. Further, to the extent rigid employment schedules and the absence of
12 telecommute options for employees contribute to delays attendant to rush-hour traffic, they
13 heighten the tension between work and family responsibilities that so many workers face.
14 Moreover, to the extent flexible working hours and telecommuting options will reduce
15 demands on streets and highways and mass transportation systems during rush hour, San
16 Francisco and the Bay Area will likely benefit from both an environmental and economic
17 standpoint.

18 7-(e) An employee’s actual or perceived status as a caregiver can create workplace
19 and pay inequities, which often operate to the detriment of women and their families because
20 of the continuing primary role of women as caregivers in the United States. These problems
21 are most obvious when an employer refuses to hire or promote an employee because of that
22 person’s family or other caregiving responsibilities. ~~Legal protection of caregivers against such~~
23 ~~arbitrary acts does not currently exist.~~ But pay inequity may arise even if an employer does not
24 consciously intend to place workers at a disadvantage because of their actual or perceived
25 status as caregivers. For example, employers may perceive mothers as less committed to their

1 work due to stereotypes rather than performance, which may hinder these employees' career
2 advancement. Eemployees with care-giving responsibilities may be channeled into or may
3 themselves gravitate toward lower-paying assignments or career paths that they or their
4 employer view as more compatible with family needs. Employees may temporarily drop out of
5 the workforce because there is insufficient workplace flexibility, and when they return to the
6 workforce they may be unable to catch up to the pay rates of employees performing the same
7 or similar work who did not leave. Out-of-pocket caregiving expenses may compound these
8 economic burdens. A 2021 AARP report estimated that unpaid caregivers average more than \$7,000
9 per year in out-of-pocket expenses, such as paying for medical expenses, in-home care, and housing
10 expenses for the person needing care.

11 8-(f) The current cultural climate within many businesses idealizes the employee who
12 works full-time and long hours, is available for extra work hours on short notice, and has few if
13 any commitments outside of work that would take precedence over work responsibilities.
14 These values are based in large part on a traditional, gendered division of labor. Historically,
15 men could comply with these idealized worker norms because women performed full-time
16 childcare and domestic duties. Yet, while women's participation in the paid labor market is
17 now widespread, women continue to take on childcare and household duties, do the lion's
18 share of housework, provide the majority of physical and emotional care for children, and take
19 time off to care for sick family members and to attend to other family needs.

20 9-(g) Many employers expect that employees will outsource childcare and other
21 caregiving responsibilities, without considering that such costs may constitute an
22 unsustainable proportion of family income relative to other expenses. Other employers expect
23 family members of the employee to assume childcare and other caregiving responsibilities,
24 without considering that such family members may not exist, or may themselves have work
25

1 responsibilities, caregiving responsibilities, or their own need for care that foreclose their
2 assuming these functions.

3 ~~10.~~(h) In response to the needs of the modern workforce, some employers have
4 instituted flexible work arrangements that alter the time or place at which work is conducted,
5 or the amount of work that is conducted, to allow employees to more easily meet the needs of
6 both work and family life. But even when employers offer flexible workplace arrangements,
7 employees may not avail themselves of such arrangements for reasons such as stigma and
8 lack of consistent consideration by the employer of such requests. Employees who seek
9 flexible work arrangements may endure a “flexibility bias” or “flexibility stigma” in which they
10 are discredited and devalued in the workplace. Aware of this problem, some employees
11 ~~forego~~ forgo flexible work opportunities. And many employees do not have such opportunities,
12 because many employers do not systematically offer or consider requests for flexible working
13 arrangements but instead leave requests from employees to the discretion of an individual
14 manager, or do not even allow consideration of such requests. This voluntary patchwork
15 system of accommodating employees’ needs for flexible working arrangements falls far short
16 of meeting those needs.

17 ~~11.~~(i) While a broad range of employees are adversely affected by rigid work and
18 schedule arrangements, some categories of workers are hit harder than others. Workers who
19 lack access to flexible work schedules are disproportionately low-wage workers, female
20 workers, and workers of color. Employees with a college degree are nearly twice as likely to
21 be able to change their schedules than those with less than a high school degree.

22 ~~12.~~(j) Experience with laws in other countries to increase workplace flexibility has been
23 overwhelmingly positive. Workplace flexibility has been shown to benefit employers and
24 employees, as well as the environment. In recent years, the United Kingdom, Australia,
25 Northern Ireland, Finland, Norway, Sweden, and New Zealand have pioneered model workplace

1 laws that grant parent and caregiver workers the right to request flexible working
2 arrangements. In Great Britain, in the first year after implementing the right to request a
3 flexible working arrangement, a million parents came forward, and nearly all requests were
4 granted with little opposition on the part of employers. The experiences of these countries
5 have been so successful that some countries are expanding their laws from parents and
6 caregivers to all employees. Already in Belgium, France, Germany, New Zealand, Great Britain,
7 and the Netherlands, flexible workplace arrangements are open to all employees of most
8 employers and are not targeted to employees with childcare or care-giving responsibilities.

9 ~~13.~~(k) Perhaps in part because of these progressive laws in other countries, and in part
10 due to a shortage or lack of family-friendly employment policies in the United States, the
11 percentage of working-age American women in the workforce has been on the decline relative
12 to other developed countries. For American women, the tension between workplace demands
13 and caregiving responsibilities cuts in both directions. Many women who work are stretched
14 thin on both fronts. And some women forego work, or work only intermittently, to make it
15 possible for them to serve as family caregivers, but they and their families suffer economic
16 harm as a result.

17 ~~14.~~(l) Similar “right to request” legislation at the Federal level was introduced in 2007
18 by then-U.S. Senators Edward M. Kennedy, Hillary Clinton, and Barack Obama; the same bill
19 has been introduced ~~three~~ several times since 2007, most recently by Congressional
20 Representative Carolyn Maloney in June 2013 May 2021. As this latest effort indicates, despite a
21 2010 White House summit on this topic, these Congressional attempts have not been
22 successful, although in 2014 President Obama extended to federal employees a right to request
23 flexibility in working arrangements. Recently ~~Also~~ in 2014, the State of Vermont was became the first
24 jurisdiction in the United States to pass a “right to request” law modeled after the
25 Congressional bill. New Hampshire enacted similar legislation in 2016. A growing number of

1 state and local governments have also passed laws explicitly prohibiting discrimination based
2 on caregiver status.

3 ~~15.(m)~~ Studies indicate that providing employees with access to flexible work
4 arrangements reduces the conflicts many face between their work responsibilities and their
5 family obligations, with the effect of enhancing employee satisfaction and morale and overall
6 well-being, possibly even to the point of reducing mental health problems among employees.

7 ~~16.(n)~~ Flexible work arrangements also benefit businesses at minimal cost.
8 Implementing workplace flexibility helps businesses attract and retain key talent, increase
9 employee retention and reduce turnover, reduce overtime needs, reduce absenteeism, and
10 enhance employee productivity, effectiveness, and engagement. Further, according to the
11 President's Council of Economic Advisors, as more businesses adopt flexibility practices, the
12 benefits to society, in the form of reduced automobile traffic, improved employment outcomes,
13 and more efficient allocation of employees to employers, may even be greater than the gains
14 to individual businesses and employees.

15 (o) The COVID-19 pandemic forced many businesses and government entities to adopt full-
16 time work from home and other workplace flexibilities for their employees. Despite widespread
17 closures and disruptions among schools and child care providers, many employers found that
18 employees were more productive and effective working from home. As a result, many employers have
19 announced that they will continue workplace flexibilities after the pandemic, particularly regarding
20 remote work. President Biden has announced that the federal government will permanently offer
21 enhanced telework opportunities. Salesforce, Square, Dropbox, Coinbase, Yelp, Twitter, Facebook,
22 and numerous other corporations have announced plans to let most employees work mostly or entirely
23 from home. Often these changes are being implemented alongside other flexibilities in when and how
24 employees work. For employees working in positions where remote work is simply not possible, the
25 ability to request flexibility or predictability may be especially critical.

1 (p) Despite many employers voluntarily expanding flexibility, particularly in terms of remote
2 work, legal protections of caregivers remain inadequate. In July 2021, the Youth, Young Adult, and
3 Families Committee of the Board of Supervisors held a hearing on the Family Friendly Workplace
4 Ordinance, including considering ways to strengthen the important protections it provides. The
5 amendments to this Chapter 12Z strengthen the Family Friendly Workplace Ordinance by providing
6 that employees shall be permitted a Flexible or Predictable Working Arrangement unless the
7 arrangement would cause the employer undue hardship, requiring an interactive process before a
8 Flexible or Predictable Working Arrangement may be rejected, and strengthening enforcement of this
9 Chapter, among other changes.

10
11 **SEC. 12Z.3. DEFINITIONS.**

12 For purposes of this Chapter 12Z, the following definitions apply.

13 "Agency" means the Office of Labor Standards Enforcement or any successor
14 department or office.

15 "Caregiver" means an Employee who is a primary contributor to the ongoing care of
16 any of the following:

17 (1) A Child or Children for whom the Employee has assumed parental responsibility.

18 (2) A person or persons with a Serious Health Condition in a Family Relationship with
19 the Caregiver.

20 (3) A ~~parent~~ person who is age 65 or ~~over of the Caregiver~~ older and in a Family Relationship
21 with a Caregiver.

22 "Child" and "Children" mean a biological, adopted, or foster child, a stepchild, a legal
23 ward, or a child of a person standing in loco parentis to that child, who is under 18 years of
24 age.

25 "City" means the City and County of San Francisco.

1 "Director" means the Director of the Office of Labor Standards Enforcement or ~~his or~~
2 ~~her~~ the Director's designee.

3 "Employee" means any person who is employed by an Employer, who regularly works at
4 least eight hours per week within the geographic boundaries of the City for the Employer~~by an~~
5 ~~Employer~~, including part-time employees, provided that Telework shall be considered work within
6 the geographic boundaries of the City. "Employee" includes a participant in a Welfare-to-Work
7 Program when the participant is engaged in work activity that would be considered
8 "employment" under the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and any
9 applicable U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any
10 public assistance program administered by the Human Services Agency, including but not
11 limited to CalWORKS, and any successor programs that are substantially similar, that require
12 a public assistance applicant or recipient to work in exchange for their grant.

13 "Employer" means the City, or any person as defined in Section 18 of the California
14 Labor Code who regularly employs 20 or more employees, regardless of location, including an
15 agent of that Employer and corporate officers or executives who directly or indirectly or
16 through an agent or any other person, including through the services of a temporary services
17 or staffing agency or similar entity, employ or exercise control over the wages, hours, or
18 working conditions of an Employee. The term "Employer" shall also include any successor in
19 interest of an Employer. The term "Employer" shall not include the state or federal
20 government or any local government entity other than the City.

21 "Family Relationship" means a relationship in which a Caregiver is related by blood,
22 legal custody, marriage, or domestic partnerships, as defined in San Francisco Administrative
23 Code Chapter 62 or California Family Code Section 297, as either may be amended from time to
24 time, to another person as a spouse, domestic partner, child, parent, sibling, grandchild, or
25 grandparent.

1 "Flexible Working Arrangement" means a change in an Employee's terms and
2 conditions of employment that provides flexibility to assist an Employee with caregiving
3 responsibilities. ~~A Flexible Working Arrangement may include but is not limited to a modified work~~
4 ~~schedule, changes in start and/or end times for work, part-time employment, job sharing arrangements,~~
5 ~~working from home, telecommuting, reduction or change in work duties, or part year employment.~~

6 ~~"Major Life Event" means the birth of an Employee's child, the placement with an Employee of~~
7 ~~a child through adoption or foster care, or an increase in an Employee's caregiving duties for a person~~
8 ~~with a Serious Health Condition who is in a Family Relationship with the Employee.~~

9 Operative Date of Amendments means 90 days after the effective date of the ordinance in Board
10 File No. 211296 amending this Chapter 12Z that was introduced at the Board of Supervisors on
11 December 14, 2021.

12 "Predictable Working Arrangement" means a change in an Employee's terms and
13 conditions of employment that provides scheduling predictability to assist that Employee with
14 caregiving responsibilities.

15 "Serious Health Condition" means an illness, injury, impairment, or physical or mental
16 condition that involves either of the following:

- 17 (1) Inpatient care in a hospital, hospice, or residential health care facility.
- 18 (2) Continuing treatment or continuing supervision by a health care provider.

19 "Telework" means an Employee's work for an Employer from the Employee's residence or
20 other location that is not an office or worksite of the Employer if the Employer maintains an office or
21 worksite within the geographic boundaries of the City at which the Employee may work, or prior to the
22 COVID-19 pandemic was permitted to work.

23 "Work Schedule" means those days and times within a work period that an Employee
24 is required by an Employer to perform the duties of ~~his or her~~ the Employee's employment for
25 which ~~he or she~~ the Employee will receive compensation.

1
2 **SEC. 12Z.4. RIGHT TO A REQUEST FLEXIBLE OR PREDICTABLE WORKING**
3 **ARRANGEMENT.**

4 (a) *Beginning on the Operative Date of Amendments, except as provided in Section 12Z.5, a*
5 *person who has been an*~~An~~ *Employee of who has been employed with* an Employer for six months
6 or more ~~and works at least eight hours per week on a regular basis may request~~ *shall be permitted a*
7 Flexible or Predictable Working Arrangement to assist with caregiving responsibilities for 1) a
8 Child or Children for whom the Employee has assumed parental responsibility, 2) a person or
9 persons with a Serious Health Condition in a Family Relationship with the Employee, or 3) a
10 ~~parent~~ *person or persons* age 65 or older ~~of in a Family Relationship with~~ the Employee. ~~That~~
11 ~~request may include, but is not limited to, a change in the Employee's terms and conditions of~~
12 ~~employment as they relate to:~~

13 — ~~(1) The number of hours the Employee is required to work;~~

14 — ~~(2) The times when the Employee is required to work;~~

15 — ~~(3) Where the Employee is required to work;~~

16 — ~~(4) Work assignments or other factors; or~~

17 — ~~(5) Predictability in a Work Schedule.~~

18 (b) ~~Any request~~ *An Employee shall* ~~submitted~~ to the Employer *a notice of the Employee's*
19 *need for a Flexible or Predictable Working Arrangement* under this Section 12Z.4, which shall be in
20 writing and specify the arrangement ~~applied for~~ *requested. The arrangement may include, but is*
21 *not limited to, a change in the Employee's terms and conditions of employment as they relate to the*
22 *number of hours the Employee is required to work, which may include by way of example and not*
23 *limitation part-time work, part-year employment, or job sharing arrangements; the Employee's work*
24 *schedule, which may include modified hours, variable hours, predictable hours, or other schedule*
25 *changes or flexibilities; the Employee's work location, which may include by way of example and not*

1 limitation Telework; and modifying the Employee's work assignments or duties. The notice shall state,
2 the date on which the Employee requests that the arrangement becomes effective, and the
3 duration of the arrangement, and the notice shall explain how the request is related to care
4 giving.

5 (c) An Employer may require an Employee to attest to or verify the Employee's verification
6 of care-giving responsibilities as part of the request prior to agreeing to a Flexible or Predictable
7 Working Arrangement.

8 (d) An Employee may make announce the initial request notice orally verbally, after which
9 the Employer shall either, in writing or verbally orally, refer the Employee to the posting
10 required by Section 12Z.8 and instruct the Employee to prepare and submit a written request
11 notice under subsection (b).

12 ~~(e) A request made under this Section may be made twice every twelve months, unless the~~
13 ~~Employee experiences a Major Life Event, in which case the Employee may make, and the Employer~~
14 ~~must consider, an additional request.~~

15
16 **SEC. 12Z.5. RESPONSE TO REQUEST PROCESS FOR ESTABLISHING A FLEXIBLE**
17 **OR PREDICTABLE WORKING ARRANGEMENT.**

18 (a) Beginning on the Operative Date of Amendments, aAn Employer to whom an Employee
19 submits a request notice under Section 12Z.4 ~~must~~ may elect to meet with ~~an~~the Employee
20 requesting regarding a Flexible or Predictable Working Arrangement within ~~21~~ 14 days of the
21 request oral or written notice.

22 (b) An Employer must ~~consider and~~ respond ~~to an Employee's request for a Flexible or~~
23 ~~Predictable Working Arrangement~~ in writing within 21 days of the meeting required in Employee's
24 oral or written notice under subsection (a). The deadline in this Section 12Z.5(b) may be
25 extended by agreement with the Employee confirmed in writing.

1 (c) ~~An Employer may grant or deny a request for Flexible or Predictable Working~~
2 ~~Arrangement. Decision or Interactive Process.~~

3 _____ (1) An Employer who ~~grants~~ agrees to the ~~request~~ Flexible or Predictable Working
4 Arrangement shall confirm the arrangement in writing to the Employee.

5 (2) An Employer who does not agree to the Flexible or Predictable Working
6 Arrangement shall engage in an interactive process with the Employee to attempt in good faith to
7 determine a Flexible or Predictable Working Arrangement that is acceptable to both the Employee and
8 Employer.

9 (3) An Employer may deny a Flexible or Predictable Working Arrangement that would
10 be acceptable to the Employee only if granting such an arrangement would cause the Employer undue
11 hardship by causing the Employer significant expense or operational difficulty when considered in
12 relation to the size, financial resources, nature, or structure of the Employer's business. An Employer
13 denies a request must explain the denial in a written response that sets out ~~a bona fide business~~
14 ~~reason~~ the basis for the denial and, notifies the Employee of the right to request reconsideration
15 by the Employer under Section 12Z.6 and the right to file a complaint under Section 12Z.10, and
16 includes a copy of the ~~text of that~~ notice under Section 12Z.8. ~~Bona fide business reasons may~~
17 ~~include~~ Bases for undue hardship may include, but are not limited to, the following:

18 _____ (1A) The identifiable costs directly caused by ~~of~~ the ~~change in a term or~~
19 ~~condition of employment requested in the application~~ Flexible or Predictable Working Arrangement,
20 including but not limited to the cost of productivity loss, retraining or hiring Employees, or
21 transferring Employees from one facility to another facility.

22 _____ (2B) Detrimental effect on ability to meet customer or client demands.

23 _____ (3C) Inability to organize work among other Employees.

24 _____ (4D) Insufficiency of work to be performed during the time or at the
25 location the Employee proposes to work.

1 (d) ~~Either an Employer or an Employee may revoke an applicable A Flexible or Predictable~~
2 Working Arrangement may be altered by mutual agreement of the Employer and Employee. An
3 Employer who concludes that a Flexible or Predictable Working Arrangement is causing the Employer
4 undue hardship shall engage in an interactive process with the Employee to attempt in good faith to
5 determine with 14 days written notice to the other party; if either party so revokes, the Employee may
6 submit a request for a different Flexible or Predictable Working Arrangement that would be
7 acceptable to both the Employee and Employer. If such interactive process is unsuccessful in
8 determining a different Flexible or Predictable Working Arrangement, an Employer may revoke the
9 existing Flexible or Predictable Working Arrangement after the interactive process with 14 days
10 written notice to the Employee. and the Employer must respond to that request as set forth in Sections
11 12Z.5 and 12Z.6. Each time an Employer revokes a Flexible or Predictable Working Arrangement, an
12 Employee may make an additional request than the allowable number per year under Section 12Z.4(e).

13 (e) For an Employer who grants a Predictable Working Arrangement, if the Employer
14 has insufficient work for the Employee during the period of the Predictable Working
15 Arrangement, nothing in this Ordinance Chapter 12Z requires the Employer to compensate the
16 Employee during such period of insufficient work.

17
18 **SEC. 12Z.6. REQUEST FOR RECONSIDERATION BY EMPLOYEE FROM THE**
19 **DENIAL OF ~~REQUEST FOR~~ FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.**

20 (a) An Employee whose ~~request for~~ Flexible or Predictable Working Arrangement has
21 been denied may submit a request for reconsideration to the Employer in writing within 30
22 days of the decision.

23 (b) If an Employee submits a request for reconsideration under this Section 12Z.6, the
24 Employer must arrange a meeting to discuss ~~this said~~ request to take place within 21 days
25 after receiving ~~the notice of~~ the request.

1 (c) With respect to any notice provided under Section 12Z.4 on or after the Operative Date of
2 Amendments, ~~t~~The Employer must inform the Employee of the Employer's final decision in
3 writing within ~~21~~ 14 days after the meeting to discuss the request for reconsideration. If the
4 request for reconsideration is denied, this notice must explain the Employer's *bona fide*
5 *business reasons for the denial* basis for concluding that a Flexible or Predictable Working
6 Arrangement would cause the Employer undue hardship and provide the Employee notice of the
7 Employee's right to file a complaint with the Agency.

8
9 **SEC. 12Z.7. EXERCISE OF RIGHTS AND CAREGIVER STATUS PROTECTED;**
10 **RETALIATION PROHIBITED.**

11 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain,
12 or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 12Z.

13 (b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote,
14 suspend, or otherwise take adverse employment action against any person on the basis of
15 Caregiver status or in retaliation for exercising rights protected under this Chapter 12Z. Such
16 rights include but are not limited to:

17 (1) the right to ~~request~~ a Flexible or Predictable Working Arrangement under this
18 Chapter;

19 * * * *

20
21 **SEC. 12Z.10. IMPLEMENTATION AND ENFORCEMENT.**

22 **(a) Administrative Enforcement.**

23 (1) The Agency is authorized to take appropriate steps to enforce this Chapter
24 12Z and coordinate enforcement of this Chapter. The Agency may investigate possible
25 violations of this Chapter. Where the Agency has reason to believe that a violation has

1 occurred, it may order any appropriate temporary or interim relief to mitigate the violation or
2 maintain the status quo pending completion of a full investigation or hearing. ~~The Agency's~~
3 ~~finding of a violation may not be based on the validity of the Employer's bona fide business reason for~~
4 ~~denying an Employee's request for a Flexible or Predictable Working Arrangement. Instead, the~~
5 ~~Agency's review shall be limited to an Employer's adherence to procedural, posting and documentation~~
6 ~~requirements, set forth in this Chapter, as well as the validity of any claims under Section 12Z.7.~~

7 (2) Where the Agency determines that a violation has occurred, it may issue a
8 determination and order any appropriate relief: ~~provided, however, that during the first twelve~~
9 ~~months following the operative date of this Chapter, the Agency must issue warnings and notices to~~
10 ~~correct. Thereafter, +~~The Agency may impose an administrative penalty, under California
11 Constitution Article XIII C, Section 1(e)(5), up to \$50.00 requiring the Employer to pay to each
12 Employee or person whose rights under this Chapter were violated up to \$50 for each day or
13 portion thereof that the violation occurred or continued, or up to the cost of care the Employee or
14 person whose rights were violated incurred due to the violation, if greater.

15 (3) Where prompt compliance is not forthcoming, the Agency may take any
16 appropriate enforcement action to secure compliance, including initiating a civil action
17 pursuant to Section 12Z.10(b). In order to compensate the City for the costs of investigating
18 and remedying the violation, and to further penalize the violating Employer, the Agency may also
19 order the violating Employer or person to pay to the City, under California Constitution Article
20 XIII C, Section 1(e)(5), a sum of not more than \$50.00 for each day or portion thereof and for
21 each Employee or person as to whom the violation occurred or continued, or up to the City's
22 costs for the investigation and remedying of the violation, if greater. Such funds shall be allocated
23 to the Agency and used to offset the costs of implementing and enforcing this Chapter 12Z and
24 other ordinances the Agency enforces.

1 (4) An Employee or other person may report to the Agency any suspected
2 violation of this Chapter, but if an Employee is reporting a violation pertaining to that
3 Employee's own request for Flexible or Predictable Working Arrangement, that Employee
4 must first have submitted a request for reconsideration to the Employer under Section 12Z.6.
5 The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to
6 the maximum extent permitted by applicable laws, the name and other identifying information
7 of the Employee or person reporting the violation; provided however, that with the
8 authorization of such person, the Agency may disclose ~~his or her~~ the person's name and
9 identifying information as necessary to enforce this Chapter or for other appropriate purposes.
10 The filing of a report of a suspected violation by an Employee does not create any right of
11 appeal to the Agency by the Employee; based on its sole discretion, the Agency may decide
12 whether to investigate or pursue a violation of this Chapter.

13 (5) In accordance with the procedures described in Section 12Z.14, the Director
14 shall establish rules governing the administrative process for determining and appealing
15 violations of this Chapter. The rules shall include procedures for:

- 16 (A) providing the Employer with notice that it may have violated this
17 Chapter;
- 18 (B) providing the Employer with a right to respond to the notice;
- 19 (C) providing the Employer with notice of the Agency's determination of a
20 violation, which shall specify a reasonable time period for payment of any relief ordered; and
- 21 (D) providing the Employer with an opportunity to appeal the Agency's
22 determination to a hearing officer, not employed by the Agency, who is appointed by the ~~City~~
23 Controller or ~~his or her~~ the Controller's designee.

24 (6) If there is no appeal of the Agency's determination of a violation, that
25 determination shall constitute the City's final administrative decision. An Employer's failure to

1 appeal the Agency's determination of a violation shall constitute a failure to exhaust
2 administrative remedies, which shall serve as a complete defense to any petition or claim
3 brought by the Employer against the City regarding the Agency's determination of a violation.

4 (7) If there is an appeal of the Agency's determination of a violation, the hearing
5 before the hearing officer shall be conducted in a manner that satisfies the requirements of
6 due process. In any such hearing, the Agency's determination of a violation shall be
7 considered prima facie evidence of a violation, and the Employer shall have the burden of
8 proving, by a preponderance of the evidence, that the Agency's determination of a violation is
9 incorrect. The hearing officer's decision of the appeal shall constitute the City's final
10 administrative decision. The sole means of review of the City's final decision, rendered by the
11 hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of
12 mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall
13 notify the Employer of this right of review after issuance of the City's final administrative
14 decision by the hearing officer.

15 **(b) Civil Enforcement.** Where an Employer fails to comply with a final administrative
16 decision within the time period required therein, the Agency may take any appropriate enforcement
17 action to secure compliance, including referring the action to the City Attorney to seek to enforce the
18 final administrative decision in a court of law or equity and, except where prohibited by State or
19 Federal law, requesting that City agencies or departments revoke or suspend any registration
20 certificates, permits, or licenses held or requested by the Covered Employer until such time as the
21 violation is remedied. ~~The City may bring a civil action in a court of competent jurisdiction against the~~
22 Employer or other person violating this Chapter and uUpon prevailing in a civil action, the City, shall
23 be entitled to such legal or equitable relief as may be appropriate to remedy the violation
24 including, but not limited to: reinstatement of an Employee; back pay; the payment of benefits or
25 pay unlawfully withheld; the payment of an additional sum as liquidated damages in the

1 amount of \$50-~~00~~ to each Employee or person whose rights under this Chapter 12Z were
2 violated for each day such violation continued or was permitted to continue, or up to the cost of
3 care the Employee or person whose rights were violated incurred due to the violation, if greater;
4 appropriate injunctive relief; and, further, shall be awarded reasonable attorneys' fees and
5 costs.

6 (c) **Interest.** In any administrative or civil action brought under this Chapter 12Z, the
7 Agency or court, as the case may be, shall award interest on all amounts due and unpaid at
8 the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

9 (d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under
10 this Chapter 12Z are cumulative.

11

12 Section 2. Effective and Operative Dates.

13 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
14 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
15 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
16 Mayor's veto of the ordinance.

17 (b) As stated in Administrative Code Section 12Z.3 as amended by this ordinance, this
18 ordinance shall become operative 90 days after its effective date.

19

20 Section 3. Severability.

21 If any section, subsection, sentence, clause, phrase, or word of this Article 33N, or any
22 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
23 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
24 remaining portions or applications of this Article. The Board of Supervisors hereby declares
25 that it would have passed this Article and every section, subsection, sentence, clause, phrase,

1 and word not declared invalid and unconstitutional without regard to whether any other portion
2 of this Article or application thereof would be subsequently declared invalid or
3 unconstitutional.

4

5 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the “Note” that appears under
10 the official title of the ordinance.

11

12 APPROVED AS TO FORM:
13 DAVID CHIU, City Attorney

14 By: /s/ _____
15 LISA POWELL
16 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Amending the Family Friendly Workplace Ordinance]

Ordinance amending the Administrative Code to provide under the Family Friendly Ordinance that Employees shall be permitted a Flexible or Predictable Working Arrangement unless such an arrangement would cause an Employer undue hardship; requiring Employers to engage in an interactive process to find a mutually agreeable Flexible or Predictable Working Arrangement; strengthening enforcement of the Ordinance; and making other changes.

Existing Law

The Family Friendly Workplace Ordinance, Administrative Code Chapter 12Z, provides employees in the City the right to request a flexible or predictable work arrangement from their employers to assist employees in their ability to care for their children, family members with serious health conditions, or parents age 65 or older. An employer may grant the request and confirm it in writing or may deny the request for a bona fide business reason. The employee may request reconsideration of the denial of a request. The Office of Labor Standards Enforcement (OLSE) enforces Chapter 12Z, but it may review an employer's adherence to the procedural, posting, and documentation requirements only and may not review the validity of an employer's bona business reason for denying a request for a flexible or predictable work arrangement.

Amendments to Current Law

The proposed ordinance would amend Chapter 12Z. Among other changes, the proposed ordinance would:

- Provide that an employee shall be provided a flexible or predictable work arrangement upon notice of the employee's need for such arrangement, unless the arrangement would cause the employer undue hardship.
- Require an employer that does not approve a flexible or predictable work arrangement to engage in an interactive process with the employee to attempt in good faith to determine a mutually-acceptable arrangement.
- Remove the limitation on OLSE review that currently prohibits review of the employer's bona fide business reason—or, under the proposed ordinance, the employer's basis for an undue hardship determination—for denying a flexible or predictable work arrangement.
- Allow flexible or predictable work arrangements to care for any family member age 65 or older, rather than specifically a parent.
- Remove a provision in Chapter 12Z that generally limits an employee to two requests for a flexible or predictable work arrangement per year.
- Provide that telework from an employee's residence or other location that is not a worksite of the employer is treated as work within the City for the purpose of the

minimum work hours requirement if the employer maintains a worksite within the City at which the employee may work or prior to the COVID-19 pandemic was permitted to work.

Background Information

In July 2021, the Youth, Young Adult, and Families Committee of the Board of Supervisors held a hearing on Chapter 12Z, including ways to strengthen its protections and enforcement.

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