

LEGISLATIVE DIGEST

[Administrative Code - Family Friendly Workplace Ordinance]

Ordinance amending the Administrative Code to allow San Francisco-based employees to request flexible or predictable working arrangements to assist with care giving responsibilities, subject to the employer's right to deny a request based on business reasons; to prohibit adverse employment actions based on caregiver status; to prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; to require employers to post a notice informing employees of their rights under the Ordinance; to require employers to maintain records regarding compliance with the Ordinance; to authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation and an appeal process for an employer to an independent hearing officer; to authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings.

Existing Law

Existing ordinances address certain employee rights and protections; for example, the Minimum Wage Ordinance (Administrative Code Chapter 12R), Paid Sick Leave Ordinance (Administrative Code Chapter 12W), and Health Care Security Ordinance (Administrative Code Chapter 14). But no ordinance addresses flexible or predictable working arrangements. California and federal laws require some employers to grant leave to an employee to care for children, or for parents, spouses, or children with serious health conditions, but are limited to employers with 50 or more employees, require employment of at least a year before leave may be taken, provide a 12 week annual maximum for the leave, and do not include requirements for other flexible working arrangements. See Cal. Gov't Code Section 12945.2 (California Family Rights Act) and 29 U.S.C. Sections 2601-2619 (Family and Medical Leave Act).

Amendments to Current Law

The proposed ordinance would apply to Employees—persons who are employed in San Francisco—by an Employer that employs 20 or more Employees. An Employee may request a flexible or predictable working arrangement to assist the Employee in carrying out caregiving responsibilities pertaining to a person in a family relationship with the Employee. An Employee must be employed for at least 6 months before requesting a flexible or predictable working arrangement. A person in a family relationship with an Employee is defined as someone who is a spouse, domestic partner, child, parent, sibling, grandchild or

grandparent. Employees may request modified work schedules, changes in start and/or end times for work, part-time employment, job sharing arrangements, working from home, telecommuting, reduction or change in work duties, or part-year employment.

An Employer who receives a request for a flexible or predictable working arrangement may deny the request based on a bona fide business reason. A bona fide business reason may include, but is not limited to, identifiable cost of the arrangement, detrimental effect on the Employer's ability to meet customer or client demands, inability to organize work among other Employees, or insufficiency of work to be performed during the time the Employee proposes to work.

The ordinance would establish a process through which the Employee receives the Employer's response and may submit a request for reconsideration to the Employer. During the process, the Employer must supply written reasons for denial of the request.

The ordinance would protect Employees from interference with their rights under the ordinance, and would make it unlawful for an Employer to take adverse employment action against a person because he or she is a Caregiver, or in retaliation for an Employee exercising his or her rights under the ordinance.

Employers must post a notice at the workplace informing Employees of their rights under the ordinance. Employers must also create and maintain certain records required by the ordinance to document requests by Employees for a flexible or predictable working arrangement, and the response to those requests.

The City's Office of Labor Standards Enforcement ("OLSE") is designated as the agency to implement and enforce the ordinance. OLSE may investigate certain aspects of compliance with the ordinance, make a determination that the ordinance has been violated, and award appropriate relief. OLSE's finding of a violation may not be based on the validity of the Employer's bona fide business reason for denying an Employee's request for a flexible or predictable working arrangement. Instead, OLSE's review is limited to consideration of an Employer's adherence to procedural, posting and documentation requirements, as well as the validity of any claims regarding Caregiver status discrimination or retaliation for exercising rights provided by the ordinance. During calendar year 2014, OLSE may issue warnings and notices to Employers. Thereafter, OLSE may assess penalties for certain types of violation. The Employer or other violator may appeal OLSE's determination to a neutral hearing officer. The City may also bring a civil action to enforce the ordinance. There is no private right of action under the Ordinance.

The Director of OLSE has authority to issue regulations or develop guidelines to implement the ordinance. The Director also must establish rules governing the administrative process for determining and appealing violations of the ordinance.

FILE NO. 130785

All or any portion of the ordinance may be expressly waived in a collective bargaining agreement.

The Director of Human Resources may exempt from the ordinance certain classifications of City employees working in public health or public safety functions. OLSE, in consultation with the Director of Human Resources, may exempt non-City Employees in public health or public safety functions.

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