

BOARD of SUPERVISORS



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MEMORANDUM

TO: Micki Callahan, Director, Department of Human Resources
Laurel Kloomok, Executive Director, Children and Families Commission
Maria Su, Director, Department of Children, Youth and Their Families
Catherine Dodd, Director, Health Service System
Trent Rhorer, Executive Director, Human Services Agency
Patrick Mulligan, Director, Office of Labor Standards Enforcement

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: June 27, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Wiener on June 21, 2016:

File No. 160719

Ordinance amending the Police Code to make technical amendments to the Paid Parental Leave Ordinance consistent with its original intent.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Susan Gard, Department of Human Resources
Krista Ballard, Human Services Agency
Donna Levitt, Office of Labor Standards Enforcement

1 [Police Code - Paid Parental Leave Ordinance]

2
3 **Ordinance amending the Police Code to make technical amendments to the Paid**
4 **Parental Leave Ordinance consistent with its original intent.**

5 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
6 **Additions to Codes** are in *single-underline italics Times New Roman font*.
7 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
8 **Board amendment additions** are in double-underlined Arial font.
9 **Board amendment deletions** are in ~~strikethrough Arial font~~.
10 **Asterisks (* * * *)** indicate the omission of unchanged Code
11 subsections or parts of tables.

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

13 Section 1. The Police Code is hereby amended by revising Sections 3300H.2,
14 3300H.3, and 3300H.4 of Article 33H, to read as follows:

15 **SEC. 3300H.2. FINDINGS.**

16 * * * *

17 (b) As of January 2016, workers eligible for California Paid Family Leave can take up
18 to six weeks of paid time off at 55% of their weekly wages up to a maximum weekly benefit
19 amount to bond with a new child or care for a seriously ill family member. The weekly benefit
20 amount is determined by using the employee's highest-earning calendar quarter during an
21 approximately 12-month base period. As of January 2016, the maximum weekly benefit
22 amount is \$1,129. To qualify for this maximum weekly benefit amount, an individual must
23 earn at least \$26,070.92 in a calendar quarter during the base period. In April 2016, the State
24 Legislature is considering enacted legislation that will that would extend the number of weeks of paid
25 time off and increase the weekly benefit amount wage replacement rate to 70% for lower-income
workers and 60% for higher-income workers, for periods of leave commencing after January 1, 2018

1 ~~but before January 1, 2022, but as of the enactment of this Article 33H, the state legislation had not~~
2 ~~been passed.~~

3 * * * *

4 (i) This Article 33H is intended to supplement the California Paid Family Leave partial
5 wage replacement by providing compensation that, in combination with the California Paid
6 Family Leave payment, will total 100% of an employee's weekly salary, subject to a weekly
7 maximum benefit amount, ~~during the six-week leave period,~~ to help ensure that concern over
8 loss of income does not preclude parents in San Francisco from bonding with their new child.

9
10 **SEC. 3300H.3. DEFINITIONS.**

11 * * * *

12 "Covered Employee" means any person, including but not limited to part-time and
13 temporary employees, who is employed by a Covered Employer (1) who commenced
14 employment with the Covered Employer at least 180 days prior to the start of the leave period,
15 (2) who performs at least eight hours of work per week for the employer within the geographic
16 boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer
17 are within the geographic boundaries of the City, and (4) who is eligible to receive paid family
18 leave compensation from the State of California under the California Paid Family Leave law
19 for the purpose of bonding with a new child. Where a person's weekly work hours fluctuate
20 from week to week, the Agency shall determine whether the person meets the eight-hour
21 and/or 40% threshold requirements in the preceding sentence by using an average of the
22 person's weekly hours worked for the Covered Employer during the three monthly pay
23 periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately
24 preceding the start of the person's California Paid Family Leave period. If the person was on
25 ~~unpaid~~ leave during any of the aforementioned pay periods, such pay period(s) shall not be

1 counted towards the average referenced in the preceding sentence; rather, the Agency shall
2 consider additional earlier corresponding pay periods for that person in order to satisfy the
3 above designated number of pay periods, but in no case shall the Agency, in calculating the
4 average, consider pay periods earlier than 26 weeks prior to the California Paid Family Leave
5 period.

6 * * * *

7 **SEC. 3300H.4. SUPPLEMENTAL PAID PARENTAL LEAVE.**

8 (a) Applicability. This Article 33H applies to Covered Employees who ~~are-receiving~~
9 California Paid Family Leave benefits for the purpose of New Child Bonding.

10 (b) Supplemental Compensation.

11 (1) General.

12 (A) Except as stated in subsection (b)(2), when a Covered Employee
13 receives California Paid Family Leave compensation for the purpose of New Child Bonding, a
14 Covered Employer shall, ~~during the leave period,~~ supplement the California Paid Family Leave
15 weekly benefit amount that the employee ~~is-receiving~~ by paying the employee Supplemental
16 Compensation in an amount such that the total of the California Paid Family Leave
17 compensation the employee ~~is-receiving~~ and the Supplemental Compensation provides, but
18 does not exceed, 100% of the employee's current normal gross weekly wage.

19 (B) If the Covered Employee's weekly wage fluctuates, the employee's
20 normal gross weekly wage shall be calculated based on an average of the employee's weekly
21 earnings from the Covered Employer during the three monthly pay periods, six bi-weekly or
22 semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the
23 employee's California Paid Family Leave period. If the employee was on unpaid or partially
24 paid leave during any of the aforementioned pay periods, such pay period(s) shall not be
25 counted towards the average referenced in the preceding sentence; rather, the average shall

1 be calculated using additional earlier corresponding pay periods in order to satisfy the above
2 designated number of pay periods, but in no case shall pay periods earlier than 26 weeks
3 prior to the California Paid Family Leave period be considered. Notwithstanding the preceding
4 sentence, if the Covered Employee's weekly wage fluctuates and the employee has worked
5 for the Covered Employer for less than 26 weeks, the weekly wage shall be calculated based
6 on an average of the employee's weekly earnings for the entire period of employment to date.

7 (C) If the California Paid Family Leave weekly benefit amount that the
8 Covered Employee is receiving from the State is based on earnings from a calendar quarter
9 during which the employee did not work for the Covered Employer, or during which the
10 employee earned a higher weekly wage from the Covered Employer than the employee is
11 receiving at the time of his or her leave, the Supplemental Compensation amount shall be
12 calculated to provide 100% of the employee's normal gross weekly wage in his or her current
13 position; provided, however, that reducing a Covered Employee's wages during the leave
14 period or within 90 days of the employee's having notified the Covered Employer of his or her
15 intent to apply for and/or use made a request or application for California Paid Family Leave shall
16 raise a rebuttable presumption that such wage reduction was made to reduce the Covered
17 Employer's Supplemental Compensation obligations under this Section 3300H.4. Unless the
18 Covered Employer rebuts the presumption with clear and convincing evidence that the
19 reduction was solely for a reason other than reducing its obligation to pay Supplemental
20 Compensation, the employer shall be obligated to pay Supplemental Compensation during
21 the leave period based on the employee's prior wage rate.

22 (D) Multiple Employers.

23 (i) Where the Covered Employee works for more than one
24 employer, the Supplemental Compensation amount shall be apportioned between or among
25 the Covered Employers based on the percentage of the Employee's total gross weekly wages

1 received from each employer. For example, if the Employee earns \$800 per week from
2 Covered Employer A, and \$200 per week from Covered Employer B for a combined total of
3 \$1,000, Employer A shall pay 80% of the Supplemental Compensation amount and Employer
4 B shall pay 20% of the Supplemental Compensation amount. If the Employee's weekly wage
5 for a given Employer fluctuates, the percentage referenced in this subsection shall be
6 calculated by averaging the employee's weekly wages earned from the Employer during the
7 three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay
8 periods immediately preceding the leave period. If the employee was on unpaid *or partially*
9 *paid* leave during any of the aforementioned pay periods, such pay period(s) shall not be
10 counted towards the average referenced in the preceding sentence; rather, the average shall
11 be calculated using additional earlier corresponding pay periods in order to satisfy the above
12 designated number of pay periods, but in no case shall pay periods earlier than 26 weeks
13 prior to the California Paid Family Leave period be considered.

14 * * * *

15 (iii) In cases of multiple employers, the Covered Employee shall, as a
16 precondition of receiving Supplemental Compensation, provide the Covered Employer(s) with
17 *both (1) a copy of the employee's Notice of Computation of California Paid Family Leave Benefits from*
18 *the State or other legally authorized statement, and (2) information pertaining to wages received*
19 *from all employers during the 90 days prior to the leave period on a form prepared by the*
20 *Agency and signed by the employee under penalty of perjury. A Covered Employee's failure*
21 *to comply with this requirement shall relieve the Covered Employer(s) of their obligation to*
22 *provide the employee with Supplemental Compensation.*

23 (3) **Termination During Leave Period.** A Covered Employer's obligation to
24 provide Supplemental Compensation under this Section 3300H.4 applies only *during the period*
25 *when* the Covered Employee *is eligible for and* is receiving California Paid Family Leave

1 benefits for New Child Bonding; provided, however, that if a Covered Employer terminates a
2 Covered Employee during the leave period, the employer's obligation to pay Supplemental
3 Compensation shall continue for the remainder of the ~~California Paid Family Leave~~ period the
4 Covered Employee is receiving California Paid Family Leave benefits.

5 (4) **Termination Prior to Leave Period.** Terminating a Covered Employee
6 prior to the employee's leave period but within 90 days of the employee's having notified the
7 Covered Employer of his or her intent to apply for and/or use ~~made a request or application for~~
8 California Paid Family Leave shall raise a rebuttable presumption that such termination was
9 taken to avoid the Covered Employer's Supplemental Compensation obligations under this
10 Section 3300H.4. Unless the Covered Employer rebuts the presumption with clear and
11 convincing evidence that the termination was solely for a reason other than avoidance of its
12 obligation to pay Supplemental Compensation, the employer shall be obligated to pay the
13 terminated employee Supplemental Compensation ~~during the leave period.~~

14 * * * *

15 (c) **Integration/Coordination of Benefits.** In accordance with California
16 Unemployment Insurance Code Section 2656, a Covered Employee who is receiving
17 California Paid Family Leave benefits may not receive Supplemental Compensation under this
18 Article 33H which would result in the employee's receiving total compensation while on paid
19 parental leave that is greater than the employee's normal gross weekly wages. As a
20 precondition of receiving Supplemental Compensation, a Covered Employee must either (1)
21 provide the Covered Employer with a copy of the employee's Notice of Computation of
22 California Paid Family Leave Benefits from the State or other legally authorized statement, or
23 (2) at the time of applying for California Paid Family Leave, provide the State with written
24 authorization to disclose the weekly benefit amount to the employer so that the Covered
25 Employer may request and obtain that information from the State. A Covered Employee's failure to

1 comply with this requirement shall relieve the Covered Employer of its obligation to provide
2 the employee with Supplemental Compensation.

3
4 Section 2. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Police
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the "Note" that appears under the
14 official title of the ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: 
19 FRANCESCA GESSNER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Paid Parental Leave Ordinance]

Ordinance amending the Police Code to make technical amendments to the Paid Parental Leave Ordinance consistent with its original intent.

Existing Law

The Paid Parental Leave Ordinance (Police Code Article 33H) requires, as of January 1, 2017, San Francisco employers with 50 or more employees to provide partial (45%) wage replacement (“Supplemental Compensation”) to employees taking leave to bond with a new child under the California Paid Family Leave program. On July 1, 2017, the ordinance’s Supplemental Compensation requirement will expand to San Francisco employers with 35 or more employees, and on January 1, 2018, to employers with 20 or more employees.

Amendments to Current Law

The ordinance would make the following technical amendments to the Paid Parental Leave Ordinance consistent with its original intent:

- Update the legislative findings to reflect a recently enacted change in the State’s Paid Family Leave law which will increase the wage replacement rate under the State law starting January 1, 2018 from 55% to 60% for higher income workers, and to 70% for lower income workers. This change in State law will have the effect of reducing Covered Employers’ Supplemental Compensation obligation to 40% and 30% of weekly wages respectively.
- Clarify that a Covered Employer’s obligation to pay Supplemental Compensation coincides with the period during which the employee actually receives Paid Family Leave wage benefits from the State, which may not necessarily coincide with the employee’s six-week leave period because employees may apply for such benefits after their leave has already commenced, and/or the State may delay in issuing payments.
- Clarify that periods of unpaid leave – in addition to paid – shall not be counted when calculating an employee’s average weekly hours for purposes of determining the employee’s eligibility as a “Covered Employee.”
- Clarify that periods of partially paid leave – in addition to unpaid leave – shall not be counted when calculating an employee’s average weekly earnings.
- Clarify that the time when Covered Employees should give the State permission to share their Paid Family Leave weekly benefit information with their employer is when they file their application with the State, and that Employers must in turn affirmatively request such weekly benefit information from the State.

Background Information

The Board of Supervisors approved the Paid Parental Leave Ordinance on April 12, 2016 (Ordinance No. 54-16). That ordinance becomes operative on January 1, 2017. The proposed ordinance contains non-substantive amendments designed to more accurately reflect how the State administers California Paid Family Leave benefits.

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