

1 [Administrative Code - Family Friendly Workplace Ordinance]

2

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

15 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
 16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 18 **Board amendment additions** are in double-underlined Arial font.
 19 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 20 **Asterisks (* * * *)** indicate the omission of unchanged Code
 21 subsections or parts of tables.

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

21 Section 1. Environmental Findings. The Planning Department has determined that the
 22 actions contemplated in this ordinance comply with the California Environmental Quality Act
 23 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
 24 the Clerk of the Board of Supervisors in File No. 130785 and is incorporated herein by
 25 reference.

1 Section 2. The Administrative Code is hereby amended by adding Chapter 12Z, to
2 read as follows:

3 **CHAPTER 12Z. SAN FRANCISCO FAMILY FRIENDLY WORKPLACE ORDINANCE**

- 4 Sec. 12Z.1 Title.
- 5 Sec. 12Z.2 Findings.
- 6 Sec. 12Z.3 Definitions.
- 7 Sec. 12Z.4 Right to Request Flexible or Predictable Working Arrangement.
- 8 Sec. 12Z.5 Response to Request for Flexible or Predictable Working
9 Arrangement.
- 10 Sec. 12Z.6 Request for Reconsideration by Employee from the Denial of Request
11 for Flexible or Predictable Working Arrangement.
- 12 Sec. 12Z.7 Exercise of Rights and Caregiver Status Protected; Retaliation
13 Prohibited.
- 14 Sec. 12Z.8 Notice and Posting Requirements for Employers.
- 15 Sec. 12Z.9 Employer Records.
- 16 Sec. 12Z.10 Implementation and Enforcement.
- 17 Sec. 12Z.11 Exemption of Certain Job Classifications Pertaining to Public Health
18 and Public Safety.
- 19 Sec. 12Z.12 Waiver through Collective Bargaining.
- 20 Sec. 12Z.13 Other Legal Requirements.
- 21 Sec. 12Z.14 Rulemaking Authority.
- 22 Sec. 12Z.15 Preemption.
- 23 Sec. 12Z.16 City Undertaking Limited to Promotion of General Welfare.
- 24 Sec. 12Z.17 Severability.

1 **SEC. 12Z.1. TITLE.**

2 This Chapter shall be known as the “San Francisco Family Friendly Workplace Ordinance.”

3

4 **SEC. 12Z.2. FINDINGS.**

5 1. Over the last few decades, the demographics of the nation’s workforce and the structures of
6 the nation’s families have undergone significant changes. As detailed below, these changes include an
7 increased number of women in the workforce; fewer households with children that have at least one
8 parent staying at home full-time; and more single-parent households. As a result of these and other
9 changes, the demands placed on workers with family responsibilities are greater and more complex
10 today than they were in an earlier era. As in every American city, San Francisco’s workforce and
11 families have experienced these changes.

12 2. A marked change in the workforce, and consequently in families, is the large increase in
13 numbers of women who now work outside the home. In 1960, the wife was employed in approximately
14 26 percent of families. In April 2013, in approximately 68 percent of families, married mothers worked
15 outside the home.

16 3. Another marked change from an earlier era is that now far fewer households have a parent
17 who does not work outside the home. Nationally, more than seventy percent of children are raised in
18 households that are headed by either a working single parent or two working parents. In 1975, a little
19 more than a third of households with married parents and children had both parents in the workforce.
20 Now, the figure is approximately two-thirds. In San Francisco in 2010, approximately eighty percent
21 of parents living with at least one child under the age of five were in the workforce.

22 4. The number of single-parent households has increased substantially, more than doubling
23 over the last fifty years. Today, at least 15-20 percent of households are single-parent. Approximately
24 half of all births to women under age 30 are to single mothers.

25

1 5. Americans are living longer than they ever did, and many families have direct caregiving
2 responsibilities for elderly parents or other older relatives. Family members serving this caregiving
3 role face the same work/family pressures as parents with minor children, and when they also have
4 caregiving responsibilities for minor children, their family burdens in effect are compounded.
5 Nationally, more than half of persons who provide unpaid care to an adult or to a child with special
6 needs are employed outside the home, with the large majority of those employees working full time.
7 Approximately 32,000 San Franciscans who work outside the home live with family members 65 years
8 and older.

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

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

1 caregiving responsibilities may be channeled into or may themselves gravitate toward lower-paying
2 assignments or career paths that they or their employer view as more compatible with family needs.
3 Employees may temporarily drop out of the workforce because there is insufficient workplace
4 flexibility, and when they return to the workforce they may be unable to catch up to the pay rates of
5 employees performing the same or similar work who did not leave.

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

14 9. Many employers expect that employees will outsource childcare and other caregiving
15 responsibilities, without considering that such costs may constitute an unsustainable proportion of
16 family income relative to other expenses. Other employers expect family members of the employee to
17 assume childcare and other caregiving responsibilities, without considering that such family members
18 may not exist, or may themselves have work responsibilities that foreclose their assuming these
19 functions.

20 10. In response to the needs of the modern workforce, some employers have instituted flexible
21 work arrangements that alter the time or place at which work is conducted, or the amount of work that
22 is conducted, to allow employees to more easily meet the needs of both work and family life. But even
23 when employers offer flexible workplace arrangements, employees may not avail themselves of such
24 arrangements for reasons such as stigma and lack of consistent consideration of such requests.
25 Employees who seek flexible work arrangements may endure a "flexibility bias" or "flexibility stigma"

1 in which they are discredited and devalued in the workplace. Aware of this problem, some employees
2 forego flexible work opportunities. And many employees do not have such opportunities, because many
3 employers do not systematically offer or consider requests for flexible working arrangements but
4 instead, leave requests from employees to the discretion of an individual manager, or do not even allow
5 consideration of such requests. This voluntary patchwork system of accommodating employees' needs
6 for flexible working arrangements falls far short of meeting those needs.

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

12 12. Experience with laws in other countries to increase workplace flexibility has been
13 overwhelmingly positive. Workplace flexibility has been shown to benefit employers and employees, as
14 well as the environment. In recent years, the United Kingdom, Australia, Northern Ireland, and New
15 Zealand have pioneered model workplace laws that grant parent and caregiver workers the right to
16 request flexible working arrangements. In Great Britain, in the first year after implementing the right
17 to request, a million parents came forward, and nearly all requests were granted with little opposition
18 on the part of employers. The experiences of these countries have been so successful that some
19 countries are expanding their laws from parents and caregivers to all employees. Already in Belgium,
20 France and the Netherlands, flexible workplace arrangements are open to all employees and are not
21 targeted to employees with childcare or caregiving responsibilities.

22 13. Perhaps in part because of these progressive laws in other countries, and in part due to a
23 shortage or lack of family-friendly employment policies in the United States, the percentage of working-
24 age American women in the workforce has been on the decline relative to other developed countries.
25 For American women, the tension between workplace demands and caregiving responsibilities cuts in

1 both directions. Many women who work are stretched thin on both fronts. And some women forego
2 work, or work only intermittently, to make it possible for them to serve as family caregivers, but they
3 and their families suffer economic harm as a result.

4 14. Similar “right to request” legislation at the Federal level was introduced in 2007 by then-
5 U.S. Senators Edward M. Kennedy, Hillary Clinton and Barack Obama; the same bill has been
6 introduced three times since 2007, most recently in June 2013. Despite a 2010 White House summit on
7 this topic, these Congressional attempts have not been successful. Recently, the State of Vermont was
8 the first jurisdiction in the United States to pass a “right to request” law modeled after the
9 Congressional bill. A growing number of state and local governments have also passed laws explicitly
10 prohibiting discrimination based on caregiver status.

11 15. Studies indicate that providing employees with access to flexible work arrangements
12 reduces the conflicts many face between their work responsibilities and their family obligations, with
13 the effect of enhancing employee satisfaction and morale and overall well-being, possibly even to the
14 point of reducing mental health problems among employees.

15 16. Flexible work arrangements also benefit businesses at minimal cost. Implementing
16 workplace flexibility helps businesses attract and retain key talent, increase employee retention and
17 reduce turnover, reduce overtime needs, reduce absenteeism, and enhance employee productivity,
18 effectiveness, and engagement. Further, according to the President’s Council of Economic Advisors,
19 as more businesses adopt flexibility practices, the benefits to society, in the form of reduced traffic,
20 improved employment outcomes, and more efficient allocation of employees to employers, may even be
21 greater than the gains to individual businesses and employees.

22
23 **SEC.12Z.3. DEFINITIONS.**

24 For purposes of this Chapter, the following definitions apply.
25

1 “Agency” means the Office of Labor Standards Enforcement or any successor department or
2 office.

3 “Caregiver” means an Employee who is a primary contributor to the ongoing care of any of
4 the following:

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

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

8 (3) A parent age 65 or over of the Caregiver.

9 “Child” and “Children” mean a biological, adopted, or foster child, a stepchild, a legal ward,
10 or a child of a person standing in loco parentis to that child, who is under 18 years of age.

11 “City” means the City and County of San Francisco.

12 “Director” means the Director of the Office of Labor Standards Enforcement or his or her
13 designee.

14 “Employee” means any person who is employed within the geographic boundaries of the City
15 by an Employer, including part-time employees. “Employee” includes a participant in a Welfare-to-

16 Work Program when the participant is engaged in work activity that would be considered

17 “employment” under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and any applicable
18 U.S. Department of Labor Guidelines. “Welfare-to-Work Program” shall include any public assistance

19 program administered by the Human Services Agency, including but not limited to CalWORKS, and
20 any successor programs that are substantially similar, that require a public assistance applicant or
21 recipient to work in exchange for their grant.

22 “Employer” means the City, or any person as defined in Section 18 of the California Labor
23 Code who regularly employs 20 or more Employees, including an agent of that Employer and
24 corporate officers or executives who directly or indirectly or through an agent or any other person,
25 including through the services of a temporary services or staffing agency or similar entity, employ or

1 exercise control over the wages, hours, or working conditions of an Employee. The term “Employer”
2 shall also include any successor in interest of an Employer. The term “Employer” shall not include the
3 state or federal government or any local government entity other than the City.

4 “Family Relationship” means a relationship in which a Caregiver is related by blood, legal
5 custody, marriage, or domestic partnerships, as defined in San Francisco Administrative Code Chapter
6 62 or California Family Code Section 297, to another person as a spouse, domestic partner, child,
7 parent, sibling, grandchild or grandparent.

8 “Flexible Working Arrangement” means a change in an Employee’s terms and conditions of
9 employment that provides flexibility to assist an Employee with caregiving responsibilities. A Flexible
10 Working Arrangement may include but is not limited to a modified work schedule, changes in start
11 and/or end times for work, part-time employment, job sharing arrangements, working from home,
12 telecommuting, reduction or change in work duties, or part-year employment.

13 “Major Life Event” means the birth of an Employee’s child, the placement with an Employee of
14 a child through adoption or foster care, or an increase in an Employee’s caregiving duties for a person
15 with a Serious Health Condition who is in a Family Relationship with the Employee.

16 “Predictable Working Arrangement” means a change in an Employee’s terms and conditions of
17 employment that provides scheduling predictability to assist that Employee with caregiving
18 responsibilities.

19 “Serious Health Condition” means an illness, injury, impairment, or physical or mental
20 condition that involves either of the following:

21 (1) Inpatient care in a hospital, hospice, or residential health care facility.

22 (2) Continuing treatment or continuing supervision by a health care provider.

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

1 **SEC. 12Z.4. RIGHT TO REQUEST FLEXIBLE OR PREDICTABLE WORKING**

2 **ARRANGEMENT.**

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

10 (1) The number of hours the Employee is required to work;

11 (2) The times when the Employee is required to work;

12 (3) Where the Employee is required to work;

13 (4) Work assignments or other factors; or

14 (5) Predictability in a Work Schedule.

15 (b) Any request submitted to the Employer under this Section shall be in writing and
16 specify the arrangement applied for, the date on which the Employee requests that the arrangement
17 becomes effective, and the duration of the arrangement, and explain how the request is related to
18 caregiving.

19 (c) An Employer may require verification of caregiving responsibilities as part of the
20 request.

21 (d) An Employee may make the initial request verbally, after which the Employer shall,
22 either in writing or verbally, refer the Employee to the posting required by Section 12Z.8 and instruct
23 the Employee to prepare a written request under subsection (b).

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

4
5 **SEC. 12Z.5. RESPONSE TO REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING**
6 **ARRANGEMENT.**

7 (a) An Employer to whom an Employee submits a request under Section 12Z.4 must meet
8 with an Employee requesting a Flexible or Predictable Working Arrangement within 21 days of the
9 request.

10 (b) An Employer must consider and respond to an Employee’s request for a Flexible or
11 Predictable Working Arrangement in writing within 21 days of the meeting required in subsection (a).
12 The deadline in this Section may be extended by agreement with the Employee confirmed in writing.

13 (c) An Employer may grant or deny a request for Flexible or Predictable Working
14 Arrangement. An Employer who grants the request shall confirm the arrangement in writing to the
15 Employee. An Employer who denies a request must explain the denial in a written response that sets
16 out a bona fide business reason for the denial, notifies the Employee of the right to request
17 reconsideration by the Employer under Section 12Z.6, and includes a copy of the text of that Section.
18 Bona fide business reasons may include but are not limited to, the following:

19 (1) The identifiable cost of the change in a term or condition of employment requested
20 in the application, including but not limited to the cost of productivity loss, retraining or hiring
21 Employees, or transferring Employees from one facility to another facility.

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

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

24 (4) Insufficiency of work to be performed during the time the Employee proposes to
25 work.

1 (d) Either an Employer or an Employee may revoke an applicable Flexible or Predictable
2 Working Arrangement with 14 days written notice to the other party; if either party so revokes, the
3 Employee may submit a request for a different Flexible or Predictable Working Arrangement and the
4 Employer must respond to that request as set forth in Sections 12Z.5 and 12Z.6. Each time an
5 Employer revokes a Flexible or Predictable Working Arrangement, an Employee may make an
6 additional request than the allowable number per year under Section 12Z.4(e).

7 (e) For an Employer who grants a Predictable Working Arrangement, if the Employer has
8 insufficient work for the Employee during the period of the Predictable Working Arrangement, nothing
9 in this Ordinance requires the Employer to compensate the Employee during such period of insufficient
10 work.

11
12 **SEC. 12Z.6. REQUEST FOR RECONSIDERATION BY EMPLOYEE FROM THE**
13 **DENIAL OF REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.**

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

17 (b) If an Employee submits a request for reconsideration under this Section, the Employer
18 must arrange a meeting to discuss this request to take place within 21 days after receiving the notice of
19 the request.

20 (c) The Employer must inform the Employee of the Employer's final decision in writing
21 within 21 days after the meeting to discuss the request for reconsideration. If the request for
22 reconsideration is denied, this notice must explain the Employer's bona fide business reasons for the
23 denial.

1 **SEC. 12Z.7. EXERCISE OF RIGHTS AND CAREGIVER STATUS PROTECTED;**

2 **RETALIATION PROHIBITED.**

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

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

9 (1) the right to request a Flexible or Predictable Working Arrangement under this
10 Chapter;

11 (2) the right to request reconsideration of the denial of a request for a Flexible or
12 Predictable Working Arrangement under this Chapter;

13 (3) the right to file a complaint with the Agency alleging a violation of any provision of
14 this Chapter;

15 (4) the right to inform any person about an Employer's alleged violation of this
16 Chapter;

17 (5) the right to cooperate with the Agency or other persons in the investigation or
18 prosecution of any alleged violation of this Chapter;

19 (6) the right to oppose any policy, practice, or act that is unlawful under this Chapter;
20 or

21 (7) the right to inform any person of his or her rights under this Chapter.

22
23 **SEC. 12Z.8. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

24 (a) The Agency shall, by the operative date of this Chapter, publish and make available to
25 Employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable

1 for posting by Employers in the workplace informing Employees of their rights under this Chapter. The
2 Agency shall update this notice on December 1 of any year in which there is a change in the languages
3 spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the
4 notice required herein with the notice required by Section 12R.5(a) and/or 12W.5(a) of the
5 Administrative Code or any other Agency notice that Employers are required to post in the workplace.

6 (b) Every Employer shall post in a conspicuous place at any workplace or job site where any
7 Employee works the notice required by subsection (a). Every Employer shall post this notice in English,
8 Spanish, Chinese, and any language spoken by at least 5% of the Employees at the workplace or job
9 site.

10
11 **SEC. 12Z.9. EMPLOYER RECORDS.**

12 Employers shall retain documentation required under this Chapter for a period of three years
13 from the date of the request for a Flexible or Predictable Working Arrangement, and shall allow the
14 Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor
15 compliance with the requirements of this Chapter. When an issue arises as to an alleged violation of an
16 Employee's rights under this Chapter, if the Employer has failed to maintain or retain documentation
17 required under this Chapter, or does not allow the Agency reasonable access to such records, it shall
18 be presumed that the Employer has violated this Chapter, absent clear and convincing evidence
19 otherwise.

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 and
24 coordinate enforcement of this Chapter. The Agency may investigate possible violations of this
25 Chapter. Where the Agency has reason to believe that a violation has occurred, it may order any

1 appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending
2 completion of a full investigation or hearing. The Agency's finding of a violation may not be based on
3 the validity of the Employer's bona fide business reason for denying an Employee's request for a
4 Flexible or Predictable Working Arrangement. Instead, the Agency's review shall be limited to an
5 Employer's adherence to procedural, posting and documentation requirements, set forth in this
6 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 months
9 following the operative date of this Chapter, the Agency must issue warnings and notices to correct.
10 Thereafter, the Agency may impose an administrative penalty up to \$50.00 requiring the Employer to
11 pay to each Employee or person whose rights under this Chapter were violated for each day or portion
12 thereof that the violation occurred or continued.

13 (3) Where prompt compliance is not forthcoming, the Agency may take any
14 appropriate enforcement action to secure compliance, including initiating a civil action pursuant to
15 Section 12Z.10(b). In order to compensate the City for the costs of investigating and remedying the
16 violation, the Agency may also order the violating Employer or person to pay to the City a sum of not
17 more than \$50.00 for each day or portion thereof and for each Employee or person as to whom the
18 violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the
19 costs of implementing and enforcing this Chapter.

20 (4) An Employee or other person may report to the Agency any suspected violation
21 of this Chapter, but if an Employee is reporting a violation pertaining to that Employee's own request
22 for Flexible or Predictable Working Arrangement, that Employee must first have submitted a request
23 for reconsideration to the Employer under Section 12Z.6. The Agency shall encourage reporting
24 pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable
25 laws, the name and other identifying information of the Employee or person reporting the violation;

1 provided, however, that with the authorization of such person, the Agency may disclose his or her name
2 and identifying information as necessary to enforce this Chapter or for other appropriate purposes.
3 The filing of a report of a suspected violation by an Employee does not create any right of appeal to the
4 Agency by the Employee; based on its sole discretion, the Agency may decide whether to investigate or
5 pursue a violation of this Chapter.

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

9 (A) providing the Employer with notice that it may have violated this Chapter;

10 (B) providing the Employer with a right to respond to the notice;

11 (C) providing the Employer with notice of the Agency's determination of a
12 violation; and

13 (D) providing the Employer with an opportunity to appeal the Agency's
14 determination to a hearing officer, not employed by the Agency, who is appointed by the City
15 Controller or his or her designee.

16 (6) If there is no appeal of the Agency's determination of a violation, that determination
17 shall constitute the City's final decision. An Employer's failure to appeal the Agency's determination
18 of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a
19 complete defense to any petition or claim brought by the Employer against the City regarding the
20 Agency's determination of a violation.

21 (7) If there is an appeal of the Agency's determination of a violation, the hearing before
22 the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
23 such hearing, the Agency's determination of a violation shall be considered prima facie evidence of a
24 violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that
25 the Agency's determination of a violation is incorrect. The hearing officer's decision of the appeal

1 shall constitute the City's final decision. The sole means of review of the City's final decision, rendered
2 by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of
3 mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the
4 Employer of this right of review after issuance of the City's final decision by the hearing officer.

5 (b) **Civil Enforcement.** The City may bring a civil action in a court of competent jurisdiction
6 against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to
7 such legal or equitable relief as may be appropriate to remedy the violation including, but not limited
8 to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an
9 additional sum as liquidated damages in the amount of \$50.00 to each Employee or person whose
10 rights under this Chapter were violated for each day such violation continued or was permitted to
11 continue; appropriate injunctive relief; and, further, shall be awarded reasonable attorneys' fees and
12 costs.

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

16 (d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this
17 Chapter are cumulative.

18
19 **SEC. 12Z.11. EXEMPTION OF CERTAIN JOB CLASSIFICATIONS PERTAINING TO**
20 **PUBLIC HEALTH AND PUBLIC SAFETY.**

21 (a) An appointing officer may request an exemption from this Chapter from the Director of
22 Human Resources for certain classifications of City employees working in public health or public
23 safety functions, based upon operational requirements according to criteria developed by the Director
24 of Human Resources. Such criteria shall promote efficiency and advance public safety or public
25 health.

1 **(b) The Agency, in consultation with the Director of Human Resources, may exempt non-**
2 **City Employees working in public safety or public health functions, upon request of those non-City**
3 **Employers, based upon operational requirements according to criteria developed by the Agency and**
4 **the Director of Human Resources. Such criteria shall promote efficiency and advance public safety or**
5 **public health.**

6
7 **SEC. 12Z.12. WAIVER THROUGH COLLECTIVE BARGAINING.**

8 **All and any portions of the applicable requirements of this Chapter shall not apply to**
9 **Employees covered by a bona fide collective bargaining agreement to the extent that such requirements**
10 **are expressly waived in the collective bargaining agreement in clear and unambiguous terms.**

11
12 **SEC. 12Z.13. OTHER LEGAL REQUIREMENTS.**

13 **This Chapter provides minimum employment requirements pertaining to Caregivers and**
14 **Employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any**
15 **other law, regulation, requirement, policy, or standard, or provision of a collective bargaining**
16 **agreement, that provides for greater or other rights of or protections for Caregivers or Employees, or**
17 **that extends other rights or protections to Employees.**

18
19 **SEC. 12Z.14. RULEMAKING AUTHORITY.**

20 **The Director shall have authority to issue regulations or develop guidelines that implement**
21 **provisions of this Chapter. Notwithstanding the definition of “Director” in this Chapter, a designee of**
22 **the Director shall not have authority under the foregoing sentence of this Section; but a designee of the**
23 **Director shall have authority to conduct hearings leading to the adoption of regulations or guidelines.**

24
25 **SEC. 12Z.15. PREEMPTION.**

1 Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power,
2 or duty in conflict with federal or state law.

3
4 **SEC. 12Z.16. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
5 **WELFARE.**

6 In enacting and implementing this Chapter, the City is assuming an undertaking only to
7 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
8 an obligation for breach of which it is liable in money damages to any person who claims that such
9 breach proximately caused injury. This Chapter does not create a legally enforceable right against the
10 City.

11
12 **SEC. 12Z.17. SEVERABILITY.**

13 If any of the parts or provisions of this Chapter (including sections, subsections, sentences,
14 clauses, phrases, words, numbers) or the application thereof to any person or circumstance is held
15 invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this
16 Chapter, including the application of such part or provisions to persons or circumstances other than
17 those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect.
18 To this end, the provisions of this Chapter are severable.

19
20 Section 3. Effective and Operative Dates.

21 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
22 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
23 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
24 Supervisors overrides the Mayor's veto of the ordinance.

1 (b) Operative Date. This ordinance shall become operative on January 1, 2014 and
2 shall have prospective effect only.

3
4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 JON GIVNER
8 Deputy City Attorney

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
n:\legana\as2013\1300455\00863207.doc