

LEGISLATIVE DIGEST

[San Francisco Family Friendly Workplace Ordinance]

Ordinance amending the Administrative Code to: allow San Francisco-based employees who are caregivers to request flexible working arrangements, subject to the employer's right to deny a request based on specified undue hardship; require that employers give advance notice of changes in an employee's work schedule; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process to an independent hearing officer; 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 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 Family Friendly Workplace Ordinance ("Ordinance") applies to Employees—persons who are employed in San Francisco—by an Employer that employs 10 or more Employees. An Employee who is a "primary contributor to the ongoing care of" a child under 18 years of age, or of a dependent with a serious medical condition—defined as a Caregiver—may request a Flexible Working Arrangement, which will assist the Employee in carrying out caregiving responsibilities. An Employee must be employed for at least 6 months before requesting a Flexible Working Arrangement. A Dependent is a person who is related to the Caregiver by blood, legal custody, marriage, or to a domestic partner, or to a person with whom the Caregiver lives in a familial relationship.

Caregivers may seek from Employers changes in the terms and conditions of their employment that include, but are not limited to, “part-time employment, a modified work schedule, flexible start and/or end times for work, job sharing arrangements, working from home, telecommuting, reduction in work duties, and part-year employment.”

An Employer who receives a request for a Flexible Working Arrangement may deny the request based on undue hardship. Undue hardship may include, but is not limited to, certain business reasons, such as 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. Absent undue hardship, the Employer must grant the request.

The Ordinance establishes a process through which the Caregiver receives the Employer’s response and may appeal the denial of a request to the Employer. During the process the Employer must supply written reasons for denial of the request.

The Ordinance also requires Employers to give at least two weeks notice of change of an Employee’s Work Schedule. A Work Schedule is defined as “those days and times within a work period that an Employee is required by an Employer to perform the duties of his or her employment for which he will receive compensation.” This provision is intended to apply only with respect to Employees who are subject to the overtime requirements of state or federal law.

The Ordinance protects Employees from interference with their rights under the Ordinance, and makes it unlawful for an Employer to take adverse employment action against a person because he or she is a Caregiver, or in retaliation for 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 Caregivers for a Flexible Working Arrangement, and the response to those requests.

The City’s Office of Labor Standards Enforcement is designated as the Agency to implement and enforce the Ordinance. The Agency may investigate compliance with the Ordinance, make a determination that the Ordinance has been violated, and award appropriate relief. The Agency also may assess penalties in the case of certain types of violation. The Employer or other violator may appeal the Agency’s determination to a neutral hearing officer. The Agency may also bring a civil action to enforce the Ordinance. There is no private right of action under the Ordinance.

The Director of the Agency 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.

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

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