



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

April 12, 2016

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 160065 [Police Code – Paid Parental Leave for Bonding with New Child]

March 14, 2016: Small Business Commission Recommendation: **Requested amendments be made to the legislation before taking final action.**

March 28, 2016: Small Business Commission Recommendation to the Board of Supervisors is: **Not to Approve.**

Dear Ms. Calvillo,

On March 14, 2016, the Small Business Commission (SBC) unanimously voted to provide Supervisor Wiener with a list of recommended amendments and to take final action at a future meeting.

On March 28, 2016, the Small Business Commission heard the amended legislation approved by the Budget and Finance Committee and voted 6-1 to recommend to the Board of Supervisor not to approve.

On April 11, 2016, Small Business Commission amended its statement to more accurately reflect the support of the policy goal.

The SBC takes very seriously its dual responsibility to balance the public good as well as to advise the Board of Supervisors on how legislation affects San Francisco's small businesses.

Parental leave is a benefit that should be extended to all employees, no matter what size company they work for. Furthermore, the cost of the benefit should be funded collectively and universally by employee payroll deductions and/or employer payroll taxes – not selectively and locally by the individual companies that happen to be affected. The legislation was rushed through the approval process in San Francisco actually excludes employees who work for the smallest companies, and disproportionately burdens small businesses that employ many of the workers we are trying to help. Had there been more time and effort spent on the details of the San Francisco legislation, we could have developed a benefit that would be universally available to all employees and an implementation acceptable to all businesses. The Small Business Commission urges the State of California, and more importantly the federal government, to take the lead in making parental leave a universal benefit for all employees. Absent state and federal government action, the Small Business Commission urges our City government to refine this legislation to provide an equitable funding mechanism, and to make the benefits available to all employees. In so doing, we can truly serve as a responsible role model for other municipalities.

The Small Business Commission's recommendation not to approve should not be misconstrued as lack of support for parental leave. Its core objections pertain to the exclusion of many small-business employees from the benefit, as well as the benefit's funding mechanism, which inadvertently distributes the costs among industries in a disproportionate manner. In addition, the SBC objects to once again finding itself in a situation where its recommendation comes across as pitting small business against its employees. Continued attempts to solve macro-level social and economic policy issues at a micro-level, with inadequate prior research about unintended consequences, challenge the sustainability of San Francisco's small business sector.

San Francisco small businesses are experiencing astronomical rent increases; they pay their employees the highest minimum wage in the county, (many in fact pay more than the minimum wage); this year, 2016, 80% of the HCSO expenditures are irrevocable, and in 2017 it is 100% irrevocable. The failure to take into account the convergence of these expenditures with a new expenditure is fiscally reckless. No other City in the United States requires of its small businesses the number of mandated employee expenditures that San Francisco does. The only means that a small business can pay for these additionally mandated benefits is to increase the price of their goods and services. San Francisco's small businesses are already priced to the competitive edge with formula retailers and definitely over the edge with entities such as Amazon.

Formula retailers that have brick and mortar locations in San Francisco do have to pay the higher rents, higher employee benefit expenditures and meet special scheduling requirements. Non-franchise retailers are able maintain a competitive edge over our small businesses because they can keep their prices down by off-setting the higher cost to do business in San Francisco with lower employee expenditures elsewhere in the country or the world. For online retailers such as Amazon there are no retail locations SF, so is not subject to employer requirements formula retailers are subject to.

Forcing small businesses to increase their price points beyond the competitive edge results in more and more consumers choosing to spend their money where they can get their goods cheaper. We can see this with the increasing number of Amazon delivery trucks blocking traffic on our streets on a daily basis. Every employee-based social policy that is addressed at the local level increases the competitive advantage for formula retailers and large online retailers. When we try to solve social policies such as Paid Parental Leave at the local level, the irony is that we are driving consumer spending outside of San Francisco and increased spending with businesses whose employee practices are often the practices our small businesses are admonished for not providing.

At the March 6, 2016 San Francisco Municipal Fiscal Advisory Committee round table discussion on the Real Estate Market and Regional Economic Outlook, the invited experts noted that it is time to look at the economic implications of online consumption businesses such as Amazon upon service sector jobs and the City's neighborhood serving businesses.

To continually cite European countries as a justification to implement such laws in San Francisco is economically irresponsible. Smart policy making would have assessed how these policies are paid for in these countries and concurrently develop a similar economic structure to pay for them. The economic pressures that these laws are putting on small businesses are real. Not to give serious consideration to the long term economic implications is short sighted. It is unfortunate that the Economic Impact Report did not fully analyze the economic impact per size of business, industry and/or service sector vs. non-service sector jobs and the convergent cost of the City's employer mandates. But even with the simplified analysis, the City's Chief Economist findings do note that there will be a negative economic impact as a result of Paid Parental Leave.

In 2013 the San Francisco Wage Theft Taskforce provided the Board of Supervisors with its list of recommendations to address wage theft. The list of recommendations did not include a recommendation that future San Francisco labor laws include the private right of action by an individual or non-government entity representing an individual. Recent employer mandate ordinances have vested enforcement exclusively with the Office of Labor Standards Enforcement and the City Attorney. This includes the Fair Hire Ordinance, The Family Friendly Workplace Ordinance, the Formula Retail Workers Bill of Rights Ordinances, and the Health Care Security Ordinance.

It is with the aforementioned the SBC established its list of required amendments to consider a recommendation of approval.

1. Amend the definition of Covered Employer to under 50 or more employees. The definition should not go below 50 or more employees.

2. Amend the definition of Covered Employee to
 - a. (1) who commenced employment with the Covered Employer at least 12 months prior to the start date of the leave period.
 - b. (2) who performs at least 20 hours of work per week for the employer within the geographic boundaries of the City.
3. Strike SEC. 3300H.8 © Civil Enforcement. Eliminate private right of enforcement. Strike the ability of individual or entity acting on behalf of the individual (other than government entity).
4. Add a new subsection; "Employee Reimbursement." Commission recommendation: If the employee voluntarily separates within 6 months of the end of the bonding period.
5. Clarify that a Covered Employer may require an employee to use up to two weeks of unused vacation leave before receiving Supplemental Compensation under the city ordinance.
6. SEC 3300H.6 Employer Records. Amend to require records retention for three years, per most recent employer ordinances.
7. In addition, Section 2 (b) Operative Date should be amended to January 1, 2017.

Recommendation 1 and 2 not considered nor accepted. Recommendation 4, the recommendation to establish a new subsection was taken but did not meet the recommended timeframe. Recommendations 3, 5, 6, and 7 accepted.

The Small Business Commission supports the intent of this legislation, to facilitate parental leave. Its recommendation not to approve is based on flaws in the legislation that exclude a segment of small-business employees from receiving benefits, and that unevenly distribute costs to certain businesses. As a consequence of the expedited process by which this legislation was developed and enacted, these and other issues were not properly taken into account. Given the Commission's support for the aim of the policy, as well as the negative impact of enacting such a policy with high funding requirements at the local business level, the Small Business Commission recommends the best means to achieve the City's goal is to put more pressure on the State to meet the 100% salary goal.

Thank you for considering the Small Business Commission's comments on this legislation. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

- cc. Scott Wiener, Board of Supervisors
Nicole Elliot, Office of the Mayor
Ben Rosenfield, Controller
Todd Rufo, Director, Office of Economic and Workforce Development
Emily Murase, Ph.D., Executive Director, Commission on the Status of Women
Linda Wong, Clerk, Budget and Finance Committee