

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: William Scott, Chief, Police Department

FROM: Stephanie Cabrera, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: November 8, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Mar on November 1, 2022:

File No. 221124

Ordinance amending the Police Code to require private employers to pay employees who are military reservists and are called for military duty the difference between their military salary and their salary as employees, for up to 30 days in a calendar year, and to create procedures for implementation and enforcement of this requirement.

If you have any additional 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 or by email at: Stephanie.Cabrera@sfgov.org

cc: Lisa Ortiz, Police Department
Lili Gamero, Police Department
Diana Oliva-Aroche, Police Department
Stacy Youngblood, Police Department

1 [Police Code - Private Sector Military Leave Pay]

2

3 **Ordinance amending the Police Code to require private employers to pay employees**
4 **who are military reservists and are called for military duty the difference between their**
5 **military salary and their salary as employees, for up to 30 days in a calendar year, and**
6 **to create procedures for implementation and enforcement of this requirement.**

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

11

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

13

14 Section 1. The Police Code is hereby amended by adding Article 33Q, consisting of
15 Sections 3300Q.1-3300Q.8, to read as follows:

16

17 **ARTICLE 33Q: PRIVATE SECTOR MILITARY LEAVE PAY**

18 **SEC. 3300Q.1. TITLE.**

19 *This Article 33Q shall be known as the Military Leave Pay Protection Act.*

20

21 **SEC. 3300Q.2. BACKGROUND AND FINDINGS.**

22 *(a) As of 2022, there were over 600,000 United States military reserve and National Guard*
23 *personnel serving. This military reserve and National Guard population has been a cornerstone of the*
24 *City for decades. Military reserve and National Guard members have helped build the City and can be*
25 *found among the ranks of private sector healthcare, professional, and blue-collar workers. Military*

1 reserve and National Guard personnel have made significant professional and personal sacrifices to
2 serve our community, the City, the State of California, and the United States, and such sacrifices make
3 them specially deserving of recognition and respect.

4 (b) Military reserve and National Guard personnel face many challenges when they serve
5 dually as civilian workers and in the uniformed services, including employment discrimination, income
6 insecurity, financial stress, service-related injuries, mental stress, and suicide.

7 (c) According to a September 9, 2019 Congressional Research Service report authored by
8 Kristy Kamarck and Bryce Mendez, military reservists in the National Guard had a suicide rate of 21.8
9 per 100,000 persons, compared to 17.4 per 100,000 in the U.S. adult population. While all military
10 personnel and veterans have common suicide risk factors such as exposure to combat trauma or stress,
11 combat-related illness or injury, increased access to firearms, and reintegration issues, there are
12 additional suicide risk factors unique to military reservists, due to the dual nature of their employment.
13 Due to the part-time nature of their military service, most military reservists are employed in the
14 civilian sector.

15 (d) Military reserve and National Guard personnel are often required to take military leave
16 from work in order to fulfill their obligations, including attending annual training, weekend training,
17 and emergency activations. Military reserve and National Guard personnel have also been deployed to
18 respond to the COVID-19 pandemic, natural disasters such as wildfires and floods, the need to protect
19 the California and United States Capitols, and overseas missions. Private sector military reserve and
20 National Guard personnel taking military leave often take a loss in compensation because their civilian
21 jobs pay more.

22 (e) Due to the many challenges facing military reserve and National Guard personnel, the
23 United States has made efforts to protect the income and employment security of such personnel. Under
24 the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Ch. 43, military
25

1 reserve and National Guard personnel are protected from employment discrimination on the basis of
2 their service and are guaranteed civilian reemployment rights following military service.

3 (f) State and local laws also protect the income and employment security of military reserve
4 and National Guard personnel. Under California Government Code Sections 19775 and 19775.1, state
5 employees granted military leave are eligible for paid leave for the first 30 calendar days of active duty
6 served during the absence. California Military and Veterans Code Sections 395.01, 395.02, and
7 395.03 grant other public employees up to 30 calendar days of pay while on military leave.

8 (g) Administrative Code Section 16.1 states that City employees granted military leave are
9 eligible for up to 30 days of pay while on military leave in a given fiscal year.

10 (h) Most employment protections for military reserve and National Guard personnel apply to
11 public sector employees. Salesforce, the largest employer in San Francisco as of 2022, provides
12 military leave pay for military reservists and National Guard for up to 12 months. While some private
13 employers such as Salesforce have stepped up in this manner, military reserve and National Guard
14 personnel in the private sector have far fewer protections.

15
16 **SEC. 3300Q.3. DEFINITIONS.**

17 For purposes of this Article 33Q, the following definitions apply:

18 “Agency” means the Office of Labor Standards and Enforcement or any successor department
19 or office.

20 “Employee” means any employee of any Employer who works within the geographic
21 boundaries of San Francisco, including but not limited to part-time and temporary employees, and who
22 is a member of the reserve corps of the United States Armed Forces, National Guard, or other
23 uniformed service organization of the United States.

24 “Employer” means any person, as defined in Section 18 of the California Labor Code,
25 including corporate officers or executives, who directly or indirectly or through an agent or any other

1 person, including through the services of a temporary services or staffing agency or similar entity,
2 employs or exercises control over the wages, hours, or working conditions of an employee and who
3 regularly employs 100 or more employees, regardless of location. “Employer” shall not include the
4 City or any other governmental entity.

5 “Military Duty” means active military service in response to the September 11, 2001 terrorist
6 attacks, international terrorism, the conflict in Iraq, or related extraordinary circumstances, or military
7 service to provide medical or logistical support to federal, state, or local government responses to the
8 COVID-19 pandemic, natural disasters, or engagement in military duty ordered for the purposes of
9 military training, drills, encampment, naval cruises, special exercises, Emergency State Active Duty, or
10 like activity.

11 “Supplemental Compensation” means an Employer’s obligation to pay an Employee’s partial
12 salary in accordance with Section 3300Q.4.

13
14 **SEC. 3300Q.4. SUPPLEMENTAL PAY REQUIRED.**

15 (a) Supplemental Compensation. Subject to subsection (b), an Employee shall receive from
16 their Employer, while on leave for Military Duty, the difference between the amount of the Employee’s
17 gross military pay and the amount of gross pay the Employee would have received from the Employer,
18 had the Employee worked the Employee’s regular work schedule (excluding overtime unless regularly
19 scheduled as part of the Employee’s regular work schedule). This leave for Military Duty with
20 Supplemental Compensation can be taken in daily increments for one or more days at a time, for up to
21 30 days in any calendar year.

22 **(b) Limitations and conditions.**

23 (1) The amounts of pay required by this Section 3300Q.4 shall be offset by amounts
24 required to be paid pursuant to any other law or to any policy of the Employer for military leave, such
25 that the Employee does not receive excessive payments for the leave time taken, resulting in the

1 Employee receiving more compensation cumulatively because of this Section 3300Q.4 than the
2 Employee would have received had the Employee worked the Employee's regular work schedule
3 (excluding overtime unless regularly scheduled as part of the Employee's regular work schedule).

4 (2) If the Employee, having received Supplemental Compensation under subsection (a)
5 and being fit for employment in their previous position upon release from Military Duty, does not
6 return to their position with the Employer within 60 days of release from Military Duty, the
7 compensation described in subsection (a) may, at the Employer's option, be treated as a loan payable
8 with interest at a rate equal to the minimum amount necessary to avoid imputed income under the
9 Internal Revenue Service Code of 1986, as amended from time to time, and any successor statute. In
10 that case, interest shall begin to accrue 90 days after the Employee's release from Military Duty or
11 return to fitness for employment, whichever is later. Such loan will be payable in equal monthly
12 installments over a period not to exceed five years, commencing 90 days after the Employee's release
13 from Military Duty or return to fitness for employment, whichever is later.

14
15 **SECTION 3300Q.5. IMPLEMENTATION AND ENFORCEMENT.**

16 (a) **Implementation.** The Agency shall coordinate implementation and enforcement of this
17 Article 33Q and may promulgate appropriate guidelines and/or rules for such purposes. Any guidelines
18 or rules promulgated by the Agency shall have the force and effect of law and may be relied on by
19 Employers, Employees, and other persons to determine their rights and responsibilities under this
20 Article. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective
21 implementation of this Article, including supplementary procedures for helping to inform Employees of
22 their rights under this Article, for monitoring employer compliance with this Article, and for providing
23 administrative hearings to determine whether an Employer or other person has violated the
24 requirements of this Article.

1 **(b) Administrative Enforcement.**

2 (1) The Agency is authorized to take appropriate steps to enforce this Article 33Q. The
3 Agency may investigate any possible violations of this Article. Where the Agency has reason to believe
4 that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the
5 violation or maintain the status quo pending completion of a full investigation or hearing.

6 (2) Where the Agency, after a hearing that affords a suspected violator due process,
7 determines that a violation has occurred, it may order any appropriate relief including, but not limited
8 to, the payment of any Supplemental Compensation unlawfully withheld, and the payment of an
9 additional sum as an administrative penalty to each Employee or other person whose rights under this
10 Article 33Q were violated. If any Supplemental Compensation was unlawfully withheld, the dollar
11 amount of Supplemental Compensation withheld from the Employee multiplied by three, or \$250,
12 whichever amount is greater, shall be included in the administrative penalty paid to the Employee. In
13 addition, if a violation of this Article resulted in other harm to the Employee or any other person, or
14 otherwise violated the rights of Employees or other persons, this administrative penalty shall also
15 include \$50 to each Employee or person whose rights under this Article were violated for each day or
16 portion thereof that the violation occurred or continued.

17 (3) Where prompt compliance with an order of the Agency pursuant to subsection (b) is
18 not forthcoming, the Agency may take any appropriate enforcement action to secure compliance,
19 including initiating a civil action, except where prohibited by State or Federal law, requesting that City
20 agencies or departments revoke or suspend any registration certificates, permits, or licenses held or
21 requested by the Employer or person until such time as the violation is remedied. In order to
22 compensate the City for the costs of investigating and remedying the violation, the Agency may also
23 order the violating Employer or person to pay to the City a sum of not more than \$50 for each day or
24 portion thereof of a violation, as to each employee or person for whom the violation occurred or

1 continued. Such funds shall be allocated to the Agency and used to offset the costs of implementing and
2 enforcing this Article

3 (4) An Employee or other person may report to the Agency any suspected violation of
4 this Article 33Q. The Agency shall such encourage reporting by keeping confidential, to the maximum
5 extent permitted by applicable laws, the name and other identifying information of the Employee or
6 person reporting the violation. Provided, however, that with the authorization of such person, the
7 Agency may disclose their name and identifying information as necessary to enforce this Article 3300Q
8 or for other appropriate purposes.

9 (5) The Agency shall not proceed with administrative enforcement under this subsection
10 (b) during the pendency of a civil action brought under subsection 3300Q.5(c).

11 (c) **Civil Enforcement.**

12 (1) The City, or any person or entity acting on behalf of the public as provided for
13 under applicable State law, may bring a civil action in a court of competent jurisdiction against the
14 Employer or other person violating this Article 33Q subject to subsection (2) below.

15 (2) No person aggrieved by a violation of this Article 33Q, or any entity a member of
16 which is aggrieved by a violation of this Article, may bring a civil action in a court of competent
17 jurisdiction against an Employer or other person violating this Article without first serving a written
18 notice to the Agency and the City Attorney of an intent to bring an action, including a statement of the
19 grounds for believing one or more violations have occurred. No aggrieved person or entity may bring a
20 civil action under this subsection (c)(2) if, within 90 days after service of the notice, the City brings a
21 civil action alleging a violation or the Agency informs the person or entity in writing that (A) it has
22 found probable cause to believe a violation has occurred and it intends to initiate administrative
23 enforcement under subsection (b), or (B) it has determined that no violation occurred. If the City fails
24 to file suit and the Agency fails to provide written notice within the aforementioned 90-day period, the
25 person or entity may bring a civil action for violation of this Article 33Q. The statute of limitations for

1 filing a civil action under this subsection (c)(2) shall be tolled during the aforementioned 90-day
2 period.

3 (3) Upon prevailing, any party that has brought a civil action under this subsection
4 3300Q.5(c) shall be entitled to such legal or equitable relief as may be appropriate to remedy the
5 violation including, but not limited to the payment of any Supplemental Compensation unlawfully
6 withheld, the payment of an additional sum as liquidated damages in the amount of \$50.00 to each
7 Employee or person whose rights under this Article 3300Q were violated for each day or portion
8 thereof that the violation occurred or continued, plus, where the Employer has unlawfully withheld
9 Supplemental Compensation to a Employee, the dollar amount of Supplemental Compensation withheld
10 from the Employee multiplied by three; or \$250.00, whichever amount is greater; and/or injunctive
11 relief; and, further, shall be awarded reasonable attorneys' fees and costs. Provided, however, that any
12 person or entity enforcing this Article 3300Q on behalf of the public as provided for under applicable
13 State law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and
14 reasonable attorneys' fees and costs.

15 (d) **Interest.** In any administrative or civil action brought under this Article 33Q, the Agency
16 or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
17 specified in subdivision (b) of Section 3289 of the California Civil Code, as amended from time to time.

18 (e) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this
19 Article 33Q are cumulative.

20
21 **SECTION 3300Q.6. WAIVER THROUGH COLLECTIVE BARGAINING.**

22 The requirements of this Article 33Q shall not apply to Employees covered by a bona fide
23 collective bargaining agreement to the extent that such requirements are expressly waived in the
24 collective bargaining agreement in clear and unambiguous terms.

1 **SECTION 3300Q.7. OTHER LEGAL REQUIREMENTS.**

2 (a) Nothing in this Article 33Q shall be interpreted or applied so as to create any requirement,
3 power, or duty in conflict with State or Federal law. The term “conflict” as used in this Section
4 3300Q.7 means a conflict that is preemptive under State or Federal law.

5 (b) Nothing in this Article 33Q shall be interpreted or applied to prevent an Employer from
6 adopting or retaining paid military leave policies that are more generous than policies that comply
7 with this Article.

8
9 **SECTION 3300Q.8. UNDERTAKING FOR THE GENERAL WELFARE.**

10 In undertaking the adoption and enforcement of this Article 33Q, the City is undertaking only to
11 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
12 an obligation for breach of which it is liable in money damages to any person who claims that such
13 breach proximately caused injury. This Article does not create a legally enforceable right by any
14 member of the public against the City.

15
16 Section 2. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor’s veto of the ordinance.

20
21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/ Victoria Wong
24 VICTORIA WONG
25 Deputy City Attorney

n:\legana\as2022\2300068\01637118.docx

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only