San Francisco Ordinances

Salary History, Lactation Accommodation, and Paid Parental Leave Ordinances

Small Business Rationale

Bianca Blomquist, Small Business Majority
Ellen Love, Office of Labor Standards Enforcement
Katie Wutchiett, Legal Aid at Work
Not this pic, since we are taking a different stance on the headline. We’ll need a more “health” related pic.

Lindsay Mueller, 4/19/2017
Presentation Overview

• Introductions
• Consideration of Salary History
• Lactation in the Workplace Ordinance
• SF Paid Parental Leave Ordinance (SF PPLO)
Presentation Overview

Speakers

• Bianca Blomquist, Small Business Majority
• Ellen Love, Office of Labor Standards Enforcement
• Katie Wutchiett, Legal Aid at Work
Office of Labor Standards Enforcement
City and County of San Francisco

• Established in 2000 by the S.F. Board of Supervisors.

• Enforces more than 20 San Francisco local labor ordinances.

• Scope includes City contractor requirements and City-wide ordinances.
San Francisco Labor Standards Timeline

- Prevailing Wage
- Minimum Wage
- Minimum Compensation (Living Wage)
- Paid Sick Leave
- Health Care Security
- Formula Retail Employee Rights
- Fair Chance
- Lactation in the Workplace
- Paid Parental Leave
- Consideration of Salary History
- Service Contract Prevailing Wage
- Sweatfree Contracting
- Health Care Accountability
- Family Friendly Workplace
- Prevailing Wage on Private Property

Timeline:
- 1999
- 2000
- 2001
- 2002
- 2003
- 2004
- 2005
- 2006
- 2007
- 2008
- 2009
- 2010
- 2011
- 2012
- 2013
- 2014
- 2015
- 2016
- 2017
- 2018
- 2019
- 2020
About Small Business Majority


• **National** – 7 offices in Washington, D.C., California, Colorado, Illinois, Georgia, Maryland and Virginia

• **Focus on issues of top importance to small businesses** (<100 employees) and the self-employed, including access to capital, healthcare, retirement, entrepreneurship, taxes and more; work supported by extensive research

• Our online resource hub located at [Venturize.org](http://Venturize.org) brings resources and education to small business owners in key areas of running and growing a small business.
About Small Business Majority: Our Model

**RESEARCH**
Start with extensive research (polling, economic studies) to gauge small business owner views and speak to their bottom line.

**EDUCATION**
Partner with business groups to hold seminars and roundtables to educate small business owners and get their personal views.

**ADVOCACY**
Enact change by elevating small business views in public policy debates.

**NETWORK**
Use real small business voices with lawmakers and the media (more than 20,000 earned media hits).
Questions?

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Connect with us!

Small Business Majority
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LEGAL AID AT WORK
( FORMERLY LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER )

- Non-profit organization founded in 1916
- Work & Family program protects the employment rights of pregnant women, new parents, and workers facing family medical crisis
- Legal advice and information through toll-free helplines and clinics, direct representation, policy advocacy, and public education and outreach
San Francisco Ordinances

• An ordinance is a **city-wide law**. Some of the requirements of these ordinances are now mandated under state law, too.

• **Some ordinances apply differently depending on the size of your business.**

• An employer **may not** interfere with an employee’s right or retaliate against an employee for exercising their rights under any of these ordinances.
Consideration of Salary History

• **What?** Prevents an employer from asking an employee for their previous salary

• **Why Do We Need This Ordinance?** Prevents disparities in pay from following an employee from job to job
Consideration of Salary History

• How small businesses can benefit:
  - Gender pay disparities lead to increased turnover and increased labor costs
  - Gender pay disparities harm employee morale, a key consideration for small businesses unable to afford cushy benefits packages
  - Many small business owners do not have a dedicated HR Department. This ordinance helps employers avoid costly Equal Pay Act violations
  - Small business owners who provide parity are not left at a disadvantage
Consideration of Salary History

Salary History Ordinance

SF Administrative Code 12K.1,

• Applies to all employers in San Francisco.
• Employers cannot ask job applicants about their past or current salaries.
• Employers cannot disclose current or former employees’ salary history to another employer or prospective employer without the employees’ permission.
Consideration of Salary History

Salary History Ordinance
SF Administrative Code 12K.1,

- **Employers can:**
  - Ask an applicant about their salary expectations.
  - Consider disclosed salary history information for hiring and salary offers, only if disclosed by employee

- **Employers cannot:**
  - Discriminate based on sex or gender using salary history
Salary History Notice

- Employers must post this notice in a prominent place and send a copy to each labor union or worker representative. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the work location.

Consideration of Salary History

Salary History Statewide Law

Cal. Labor Code Section 432.3

• Places the same constraints on employers statewide.
Lactation in the Workplace Ordinance

• **What?** Requires employers to provide time and space for lactation employees to express milk

• **Why Do We Need This Ordinance?** Ensures new parents can re-enter the workforce while feeding their baby in the way they choose

• **Why Employers Should Care:**
  – Helps employers to retain valuable employees
  – Employees may need fewer sick days for themselves or their child
  – Promotes gender equity in workforce
Lactation in the Workplace Ordinance

• Many small business owners provide informal accommodations for new mothers. The lactation ordinance levels the playing field for small business owners offering this space.

• A formal space to lactate allows employees to use their breaks efficiently and enable them to get back to work.
Lactation in the Workplace Ordinance

SF Police Code 330I

• Applies to all employers in San Francisco, regardless of size
• Employers must:
  – Provide employees with lactation breaks and a lactation location.
  – Have a written Lactation Accommodation Policy that explains how employees can request lactation accommodations: samples available at sfgov.org/olse/lactation-workplace
  – Provide Lactation Policy to new employees and employees who ask about pregnancy or parental leave.
Lactation in the Workplace Ordinance
Lactation Accommodation
SF Police Code 330I

• After receiving a request for lactation accommodation, employers must give the employee the written lactation accommodation policy and respond to the request within five business days.
Lactation in the Workplace Ordinance
SF Police Code 330I
Cal. Labor Code Section 1030, 1031, 1033, 1034

• Employers must **provide time** for employees to pump.
• This time **cannot** be limited and **must include time to set up and clean up**.
• Employers **do not** have to pay their employees for the time they pump **unless** an employee chooses to pump during a break period.
Lactation in the Workplace Ordinance

Lactation Location
SF Police Code 330I; Cal. Labor Code Section 1030, 1031, 1033, 1034

• A location provided for an employee’s lactation accommodation
  – cannot be a bathroom
  – must be safe, clean, shielded from view and free from intrusion
  – must have a place to sit and a surface to set a breast pump
  – must have access to electricity
  – must have access to nearby sink with running water and a refrigerator
Lactation in the Workplace Ordinance
Location Requirements
SF Police Code 3301; Cal. Labor Code Section 1030, 1031, 1033, 1034

• A location provided for an employee’s lactation accommodation can be temporary or used for other reasons, as long as it is available when the employee needs it and meets the requirements.

• Employers can claim an exemption from specific requirements if they can prove meeting that requirement would be an “undue hardship” if the employer

  – responds to their employee’s request for accommodations in writing and

  – complies with every other requirement
Lactation in the Workplace Ordinance

Cal. Labor Code Section 1030, 1031, 1033, 1034

- State passed a similar policy applying same requirements to all employers in the state of California.
- Limits exemptions to employers with fewer than 50 employees.
- If you have more than 50 employees, you may claim an exemption under the San Francisco Lactation in the Workplace Ordinance, but not the California Labor Code.
Lactation in the Workplace Ordinance
Common compliance pitfalls and how to successfully comply

• Many small business owners want to do the right thing!
• Most failures to inform employees of their right to lactation accommodation happen by accident
• Providing a written policy upon hiring helps business owners remain compliant and reduced administrative burdens.
San Francisco Paid Parental Leave Ordinance

• **What?** Requires employers to top off EDD Paid Family Leave for employees taking PFL to bond with a new child. **PFL is now 8 weeks.**
• **Why Do We Need This Ordinance?** Helps workers to afford child bonding leave
• **Why Employers Should Care:**
  – Enables workers to take the leave they need, so that they can return to work when they are truly ready
  – Paid Family leave is associated with reduced turnover
  – Paid Family Leave is associated with improved employee morale
  – Promotes gender equity in workforce and in the home
San Francisco Paid Parental Leave Ordinance

For more than a decade, California’s statewide Paid Family Leave Program (PFL) has helped level the playing field for small businesses that struggle to offer robust benefits by ensuring their employees have access to partial wage replacement when they need to care for a new child or a seriously ill family member.

Small employers support increasing both the amount of leave available to employees to bond with a new baby, and the amount of wage replacement available to employees:

- 61% of small business owners support extending current leave from eight weeks to nine weeks
- Nearly 1 out of 3 respondents (32%) strongly supporting the proposal
- More than 6 in 10 (61%) small business owners say they support a proposal to increase the wage replacement statewide
SF Paid Parental Leave Ordinance
SF Police Code 330H

- Applies to all employers who have employees who work some of their hours in San Francisco if the employer has 20 or more employees worldwide.
  - If fluctuating workforce, should average employees over PPLO Lookback period (12 weeks or 3 months)
- Requires employers to provide *supplemental compensation* to employees who are receiving paid parental leave benefits from the California Employment Development Department (EDD) to bond with a newborn, adopted or foster child.
SF Paid Parental Leave Benefits Primer

• California employees seeking to bond with a newborn, adopted or foster child within one year of the child’s birth or placement in the home can apply for Paid Family Leave (PFL) benefits from the Employment Development Department.

• PFL benefits are worker-funded and distributed by the California Employment Development Department (EDD).

• PFL can be taken at once or intermittently.

• PFL benefits provide employees with 60 to 70% (depending on income) of their weekly wages for 8 weeks.
SF Paid Parental Leave Ordinance
SF Police Code 330H

- San Francisco requires employers to provide employees with the difference between their PFL benefit amount and their normal gross weekly wages for up to 8 weeks if the employee
  - started working for the employer at least 180 days before the leave period begins
  - performs at least eight hours of work per week in San Francisco
  - works 40% of their total weekly hours in San Francisco
  - is receiving PFL to bond with a newborn, adopted, or foster child
SF Paid Parental Leave Ordinance
SF Police Code 330H

• PFL benefits are currently capped at $1,300 per week, based on annual wages of about $112,580. The supplemental weekly pay from the employer is capped at $867.00, for a total combined income of $2,167 per week.

• Employers may, however, pay more than the ordinance requires and fully compensate a high earning employee.
PPLO Lookback Period

• The 12 weekly, 6 semi-monthly or bi-weekly, or 3 monthly pay periods before the first day of an employee’s leave
  – Is used to determine if an employer is covered when the number of employees fluctuate
  – Is used to determine if an employee is covered when hours fluctuate
  – Is used to calculate the average normal weekly wage when wages fluctuate.
Paid Parental Leave Supplemental Benefits Step-by-Step

Review your employee’s Paid Parental Leave form

#1
Give Notice to Employees

#2
Give Employee(s) SF Paid Parental Leave Form (SF PPL Form)

#3
Determine Employee’s Eligibility

#4
Calculate & Pay Supplemental Compensation

How to Calculate Paid Parental Leave Benefits

• Your employee will give you their Notice of Computation from the EDD.

• The Notice of Computation contains:
  – Employee’s weekly benefit amount. Here, $962
  – Employee’s daily amount for a 7-day week
  – Employee’s quarterly, qualified wages
  – Claim effective date
Paid Parental Leave Supplemental Benefits
Calculation Example

Basic Calculation \( A - B = C \)

- EDD Base Period Weekly Wage  = $1,000
- PPLO Normal Weekly Wage  = $1,000

\[
\begin{array}{ccc}
(A) & \text{Normal Weekly Wage} & \$1,000 \\
(B) & \text{EDD Weekly Benefit} & -$600 \\
(C) & \text{Weekly Supplemental Compensation} & \$400 \\
\end{array}
\]

\[\text{– } \$400 \times 8 \text{ Weeks } = \$3,200 \] (total amount employer must pay to employee)
Paid Parental Leave Supplemental Benefits
Calculation Example, Continued

- EDD Weekly Benefit Amount = $600
- Supplemental Compensation = $400
- Total Benefit = $1,000

$600, 60%

$400, 40%
Additional Calculation Instructions and Help

- Calculation instructions:  
  https://sfgov.org/olse/paid-parental-leave-calculations

- Step-by-step webinar:  

- General information:  
  https://sfgov.org/olse/paid-parental-leave-ordinance
Paid Parental Leave Ordinance
Notice Requirements

- Covered employers must post the required PPLO poster in every workplace and job site.
- Employers must provide notice in languages other than English if more than 5 percent of the workforce speaks that language.
Paid Parental Leave Ordinance Notice Requirements, Continued

• If a covered employer has a handbook that describes other personal or parental leaves, it must include the PPLO in its next edition of the handbook.

• Employers must give an employee a copy of the Paid Parental Leave Form within a reasonable time after the employee tells the employer they are expecting a new child, or sooner, if the employee inquires about parental leave.

• Paid Parental Leave forms:
  [Link](https://sfgov.org/olse/sites/default/files/Document/Instructions%20and%20Form%20Combined%208.13.18%20ENG.pdf)
SF Paid Parental Leave Ordinance Retaliation Protection
SF Police Code 330H

• An employer cannot retaliate against an employee for exercising rights under the ordinance, or deny, restrain or interfere with this right.

1. If an employer terminates an employee during the leave period:
   • The employer must provide Supplemental Compensation for the remainder of the leave period

2. If an employer terminates an employee before the leave begins but within 90 days of an employee’s giving notice of their intent to apply for Paid Family Leave:
   • The employer must pay the Supplemental Compensation unless it can prove that it took the action solely for a reason other than avoiding its obligations under the PPLO.
Paid Parental Leave Ordinance
Common Compliance Pitfalls

• Failure to notify employees of their rights and provide the PPLO Form
• Providing a written policy upon hiring helps business owners remain compliant and reduced administrative burdens.
• Inappropriate use of paid sick leave or vacation to cover the employer’s supplemental compensation obligation.
• Reach out to the OLSE for tips on how to stay current
• Reach out to Small Business Majority with questions
• Proper bookkeeping helps ensure compliance
QUESTIONS?

• **OLSE**
  • Lactation in the Workplace: (415) 554-6406
  • Paid Parental Leave: (415) 554-4190
  • Consideration of Salary History: (415) 554-6469
Join Our Network

Ways to get involved:

• Receive a monthly newsletter
• Share your story for media requests
• Letters to the editor/Op-eds

• State events/Roundtables
• Fly-ins
• Webinars for business organizations

Connect with us!

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Questions?

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