

Rules Implementing the Paid Parental Leave Ordinance San Francisco Police Code Article 33H

**Issued by the San Francisco Office of Labor Standards Enforcement
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INTRODUCTION

The Office of Labor Standards Enforcement (“OLSE”) promulgates these Rules pursuant to Chapter 2A, Article 1, Section 2A.23 of the San Francisco Administrative Code and Article 33H of the San Francisco Police Code. Pursuant to Article 33H of the Police Code, the OLSE is authorized to coordinate implementation and enforcement of the San Francisco Paid Parental Leave Ordinance (“PPLO”) and may promulgate appropriate guidelines for such purposes.

The Paid Parental Leave Ordinance requires Covered Employers to provide partial wage replacement to Covered Employees taking up to 6 weeks of leave to bond with a new child under the California Paid Family Leave (“CA PFL”) program. As of 2017, California’s Paid Family Leave program provides 55% wage replacement for up to 6 weeks of leave to bond with a new child (in 2018, the rate is scheduled to increase to 60% or 70%, depending on income). The PPLO requires Covered Employers to provide Covered Employees on leave with “Supplemental Compensation” equal to the difference between the employee’s California Paid Family Leave benefit and the employee’s normal gross weekly wages such that the employee receives 100% of their weekly salary, subject to a weekly maximum benefit amount, during the 6 week leave period. While some employees can receive CA PFL for reasons other than new child bonding, this Supplemental Compensation is available only to employees who are eligible for and receiving CA PFL benefits for new child bonding.

Under the CA PFL program, the six week of benefits may be taken during six consecutive weeks, or it may be spread out over up to a 12-month period from the first day of the leave (referred to as “intermittent leave”).

The operative date of the PPLO is January 1, 2017. As of that date, the PPLO requires employers with 50 or more employees to provide partial wage replacement to employees taking leave to bond with a new child under the CA PFL program. The definition of a “Covered Employer” expands to include employers with 35 or more employees as of July 1, 2017 and employers with 20 or more employees as of January 1, 2018.

DEFINITIONS

“Agency” or “OLSE” means the San Francisco Office of Labor Standards Enforcement.

“California Paid Family Leave” or “CA PFL” means the State of California's partial wage replacement insurance plan for paid family leave codified at California Unemployment Insurance Code, Division 1, Part 2, Chapter 7 (commencing with Section 3300). Note that the PPLO only applies to the use of CA PFL for the purpose of new child bonding.

“Covered Employee” shall have the meaning set forth in Section 3300H.3 of the Police Code.

“Covered Employer” shall have the meaning set forth in Section 3300H.3 of the San Francisco Police Code.

“EDD” means the State of California Employment Development Department.

Normal Gross Weekly Wages shall include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. (For information on calculating Supplemental Compensation when employees earn Gratuities and Tips, See Rule 7).

“Notice of Computation” means the California EDD Notice of Computation form (Form DE429D) that is sent to an employee after an employee submits a claim for Paid Family Leave.

“Notice of Payment” means the California Employment Development Department (“EDD”) Electronic Benefit Payment (EBP) Notification (Form DE 2500E), which is provided by EDD and explains that the employee will receive PFL benefits via the EBP card.

“PPLO” or “Ordinance” means the San Francisco Paid Parental Leave Ordinance, codified at Article 33H of the San Francisco Police Code.

“PPLO Lookback Period” means the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods preceding the start of the first day of an employee’s California Paid Family Leave period or preceding the first day of any increment of intermittent leave. The PPLO Lookback Period does not include any pay periods during which the employee was on unpaid or partially paid leave. The PPLO Lookback period may not include pay periods earlier than 26 weeks prior to the California Paid Family Leave Period.

“Supplemental Compensation” shall have the meaning set forth in Section 3300H.3 of the San Francisco Police Code.

“Threshold Number of Employees” means the required number of employees that an employer must regularly employ to qualify as a “Covered Employer” under the PPLO, which is:

- a) starting on January 1, 2017, 50 or more employees;
- b) starting on July 1, 2017, 35 or more employees; and
- c) starting on January 1, 2018, 20 or more employees.

Rule 1: 180-Day Eligibility Period for Covered Employees

Interprets Article 33H, Section 3300H.3

To qualify as a “Covered Employee” under the PPLO, an employee must, among other requirements, have “commenced employment with the Covered Employer at least 180 days prior to the start of the leave period.” (Sec. 3300H.3.) This means the employee’s first day of employment with the employer was at least 180 calendar days prior to the first payable day of his/her leave under the California Paid Family Leave program for the purpose of bonding with a new child.

- a. For an employee who separates from employment prior to reaching at least 180-calendar days of employment, his or her prior days of employment shall count towards the PPLO 180-calendar day eligibility period if that employee returns to work for that same employer within one year of his/her most recent separation date.
- b. An employee who separates from employment after reaching 180 calendar days of employment shall not be required to complete a new 180-calendar day eligibility period for coverage under the PPLO if the employee is rehired by the same employer within one year of his/her most recent separation date.

Rule 2. Employer Size

Interprets Article 33H, Section 3300H.3

Background: To qualify as a Covered Employer under the PPLO, an employer must “regularly employ” the required Threshold Number of Employees (see Definitions above).

Rule 2.1. When determining whether an employer employs the required Threshold Number of Employees, the term “employee”:

- a. shall include all employees, regardless of their status or classification as seasonal, permanent or temporary, full-time or part-time, contracted (whether employed directly by the employer or through a temporary staffing agency, leasing company, professional employer organization, or other entity), or commissioned;
- b. shall include employees who are presently on paid or unpaid leave, including California Family Rights Act (“CFRA”) leave, leave of absence, disciplinary suspension, or other leave;
- c. shall not be limited to “Covered Employees,” as that term is defined in Section 3300H.3 of the PPLO; and
- d. shall include both those employees who work within San Francisco and those employees who work outside of San Francisco.

Rule 2.2. If the size of an employer’s workforce fluctuates from week to week, the number of employees that the employer “regularly employs” shall be calculated by taking the average of the number of employees performing paid work for each week included, in part or in whole, in the PPLO Lookback Period (as defined in the Definitions section above).

Example: Starting January 1, 2018, the Threshold Number of Employees is 20. An employee starts California Paid Family Leave for new child bonding on August 7, 2018. At the time of the first day of the employee’s PFL leave, the employer had recently grown from 19 to 25 employees. The PPLO Lookback Period is the last 12 weekly pay periods immediately preceding August 7, 2018, the start of the employee’s leave (the employer uses weekly payroll). The number of employees performing paid work (total worldwide) for each week of the PPLO Lookback Period are:

Week 1: 19 employees	Week 7: 21
Week 2: 19	Week 8: 21
Week 3: 19	Week 9: 21
Week 4: 19	Week 10: 23
Week 5: 20	Week 11: 25
Week 6: 20	Week 12: 25

The average number of employees during the PPLO Lookback Period is 21. Therefore, the employer is covered by the PPLO for purposes of this employee’s leave.

Rule 2.3. To determine whether an employer “regularly employs” the Threshold Number of Employees (see Definitions), all employees within a controlled group of corporations shall be counted. The term “controlled group of corporations” shall have the meaning set forth in [Section 1563\(a\) of the United States Internal Revenue Code](#), and includes (1) a parent-subsidiary controlled group and (2) a brother-sister controlled group.

Example: One person owns and operates a bookstore with 15 employees, and a pizzeria with 10 employees. The two stores fall under the category of “brother-sister corporations” in the definition of a “controlled group of corporations,” as defined in Section 1563(a) of the United States Internal Revenue Code. Therefore, all employees of the bookstore and the pizzeria are counted to determine the size of the employer. Because there are 25 employees total, the employer would be a Covered Employer under the PPLO as of January 1, 2018.

Rule 3. Newly Covered Employers and Supplemental Compensation

Interprets Article 33H, Section 3300H.4(b)(1)(A)

Background: Depending on the size of an employer, an employer may become a Covered Employer under the PPLO starting on January 1, 2017 (50 or more employees), July 1, 2017 (35 or more employees), or January 1, 2018 (20 or more employees). (See “Threshold Number of Employees” in Definitions). This rule addresses the Supplemental Compensation required where an employee commences California Paid Family Leave *before* January 1, 2017, July 1, 2017, or January 1, 2018, and his or her employer becomes a Covered Employer *during* the employee’s CA PFL period.

Where the employee:

- a. gives birth to, adopts, or obtains via foster placement a child before his/her employer is covered by the PPLO;
- b. satisfies the requirements of a Covered Employee (see Definitions); and
- c. receives CA PFL benefits for any period of time on or after the date the Ordinance includes the employer in the definition of a Covered Employer,

then the employer shall provide the employee with Supplemental Compensation only for the portion of the employee’s California Paid Family Leave period that occurs after the date that the employer became a Covered Employer.

Example: An employee who has worked full-time in San Francisco for a year takes CA PFL beginning on December 19, 2016 and ending on January 27, 2017. The employer has 100 employees and thus qualifies as a Covered Employer on the PPLO’s operative date, January 1, 2017. The employer must pay Supplemental Compensation to this employee for the period from January 1, 2017 through January 27, 2017.

Rule 4: Employee Notification

Interprets Article 33H, Section 3300H.8 (a)

In addition to posting the Notice required in Section 3300H.5, Covered Employers shall provide employees with a copy of the San Francisco Paid Parental Leave Form (PPL Form) within a reasonable time after the employee tells the employer of the fact that s/he is expecting a newborn, adopted, or foster child, or sooner if the employee enquires about paid parental leave.

Further, if the Covered Employer publishes an employee handbook that describes other kinds of personal or parental leave available to its employees, the employer shall include a description of the rights to Supplemental Compensation under the PPL in the next edition of its handbook it publishes following the adoption of these Rules.

Employers are also encouraged to give a copy of the SF PPL Form to each current and new employee, ensure that copies are available to each current and new employee, and disseminate the PPL Form in any other way.

Any employer whose workforce at any facility or establishment contains 5% or more of persons who speak a language other than English as their spoken language shall provide the PPL Form in that language. The Office of Labor Standards Enforcement shall make the PPL Form available in Spanish, Chinese, and Filipino/Tagalog. If the language spoken by 5% or more of the workforce is a language other than those listed, the employer shall be responsible for translating the form and providing it to the workforce.

In cases of intermittent leave, if the employer becomes a Covered Employer between increments of an employee's intermittent CA PFL, the employer shall provide the PPL Form to the Covered Employee before any increment of CA PFL for which the employer would be required to pay Supplemental Compensation (see Rule 8 for information on intermittent leave).

Rule 5. Preconditions for Receiving Supplemental Compensation

Interprets Article 33H, Section 3300H.4

The following sets forth the preconditions that an employee must satisfy in order to receive Supplemental Compensation under the PPLO.

Rule 5.1. San Francisco Paid Parental Leave Form

Covered Employees must complete and submit to their employers the San Francisco Paid Parental Leave Form (“PPL Form”) in order to receive Supplemental Compensation under the PPLO. This form is available on the OLSE website at www.sfgov.org/pplo.

The PPL Form includes a requirement that the employee agree, by signing in Section 3 of the PPL Form, to reimburse the full amount of Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily separates from employment with the Covered Employer(s) within 90 days of the end of the employee’s CA PFL leave period and if the employer requests such reimbursement in writing. (See Sec. 3300H.4(e)).

Employees shall submit the San Francisco Paid Parental Leave Form to the Covered Employer(s) within a reasonable time following the employee’s receipt of the Notice of Computation.

Rule 5.2. Receipt of CA PFL Benefits & Employer Notification

Background: When an eligible employee applies for CA PFL, the California Employment Development Department (“EDD”) will send the employee a form entitled “Notice of Computation” (DE429D) which sets forth the weekly benefit amount that the employee can expect to receive during their CA PFL leave period. Shortly thereafter, EDD will send the employee a separate document called “Notice of Payment” which confirms the employee is in fact eligible for and receiving PFL benefits.

Under the PPLO, in order to receive Supplemental Compensation, an employee must either:

- provide the employer with a copy of the “Notice of Computation” from EDD (**Option 1**);
or
- provide EDD with permission to share the employee’s CA PFL weekly benefit amount with their employer (**Option 2**).

To expedite receipt of Supplemental Compensation, **OLSE strongly recommends that Covered Employees select Option 1 AND Option 2**. The selection of only Option 1 would prevent the EDD from disclosing payment information to the employer which could delay claim processing. The selection of only Option 2 may result in delay of receipt of Supplemental Compensation because it requires the employer to contact EDD to obtain the employee’s CA PFL weekly benefit amount and EDD may not respond promptly. Delay in receipt of Supplemental Compensation related to the use of only one of these options is not considered a violation of the PPLO.

To use **Option 1**, the employee must:

- a) Provide the Notice of Computation to his/her employer(s) as soon as it is received; and

- b) Notify his/her employer(s) when s/he receives the first CA PFL payment from EDD. The employer may choose to either accept a phone call or other method of notifying the employer of receipt of the first payment, or to require the employee to submit a copy of the EDD Notice of Payment. If the employer requires employee to submit the EDD Notice of Payment to confirm the employee's eligibility for and actual receipt of CA PFL benefits, the employer must inform the employee of this requirement within a reasonable time after the employee tells the employer of the fact that s/he is expecting a newborn, adopted, or foster child.

For **Option 2**, the employee and employer must comply with the following procedures:

- a) On the EDD form titled "Claim for Paid Family Leave (PFL) Benefits," the employee must check "YES" for the question that asks, "May we disclose benefit payment information to your employer(s)?"
- b) If the employee is ONLY using option 2, the employee must affirmatively notify the employer(s) that s/he has granted such permission to EDD by checking the appropriate box in Section 2 of the SF Paid Parental Leave Form (PPL Form) and notify his/her employer(s) when s/he receives the first CA PFL payment from EDD. EDD does not and will not proactively notify the employer of the employee's weekly benefit amount.
- c) If the employer receives notice from the employee that s/he has selected only Option 2 the employer shall contact EDD to obtain the employee's CA PFL weekly benefit amount. The employer is encouraged contact EDD as described above as soon as reasonably practicable. If the employer does not receive a response from EDD within 7 days of contacting EDD, the employer is encouraged to notify the employee of the delay and allow the employee the opportunity to utilize Option 1.

Rule 5.3. Multiple Employer Reporting

If a Covered Employee works for more than one employer, the employee shall complete Section 4 of the PPL Form submit a copy of the completed PPL Form to each Covered Employer to report "information pertaining to wages" from all employers. A Covered Employer has the right to request documentation from the employee to verify the wages earned from other employers that the employee lists in Section 4 of the PPL Form. Sufficient documentation includes, but is not limited to, pay stubs.

(Technical correction 12/29/2016)

Rule 6. Timing for Supplemental Compensation Payments by Employer(s) to Employee

Interprets Article 33H, Section 3300H.4(b)(1)(A)

Background: The State EDD permits employees to apply for CA PFL benefits up to 49 days after the first day of the leave period, or later with good cause. As a result, many Covered Employees will not satisfy the preconditions of receiving Supplemental Compensation until after their CA PFL period begins. Additionally, some employees may not satisfy the preconditions of receiving Supplemental Compensation until after their CA PFL period ends.

Rule 6.1. For employees who satisfy the preconditions for receiving Supplemental Compensation (Rule 5) prior to or during their CA PFL period: the employer shall make a good faith effort to make the first Supplemental Compensation payment on the payday for the next full (weekly or biweekly or semi-monthly) pay period following the employee's satisfaction of all the preconditions for Supplemental Compensation. Thereafter, the employer shall make a good faith effort to make subsequent payments in accordance with the employer's regular pay schedule. In no case shall the employer pay the total Supplemental Compensation amount later than thirty days after the last day of the employee's CA PFL period.

Rule 6.2. For employees who satisfy the preconditions for receiving Supplemental Compensation (Rule 5) after their CA PFL period has concluded: the employer shall pay the total Supplemental Compensation no later than thirty days after the Covered Employee satisfies the preconditions for Supplemental Compensation.

Rule 7. Supplemental Compensation for Employees who Receive Gratuities (Tips)

Interprets Article 33H, Section 3300H.4(b)

The CA PFL weekly benefit amount is based on an employee's total earnings that include any reported gratuities (*i.e.*, tips) earned by the employee. But when calculating the Supplemental Compensation amount that is owed by an employer under the PPLO, gratuities are *not* included. Covered Employers are required to pay Supplemental Compensation only for the portion of the earnings that the employee receives as "wages" pursuant to California Labor Code Section 200, not including gratuities.

Example Calculation:

An employee earns an average of \$400 per week in wages from the Covered Employer and an average of \$100 per week in reported gratuities, for a total of \$500 normal weekly earnings.

- Step 1: Subtract the CA PFL weekly benefit amount from the normal weekly earnings including gratuities
 - Normal weekly earnings including gratuities are \$500.
 - The employee's weekly CA PFL benefit is \$275 (55% of \$500).
 - Normal weekly earnings (\$500) - CA PFL benefit (\$275) = \$225.
- Step 2: Determine the share of the normal weekly earnings (including gratuities) that the employer paid to the employee as wages only (not including gratuities).
 - Wages paid by the employer without gratuities (\$400) / normal weekly earnings (\$500) = 80%.
- Step 3: Multiply the result of Step 1 and Step 2.
 - $\$225 * 80\% = \180 is the weekly Supplemental Compensation amount that the Covered Employer must pay to the Covered Employee.

Rule 8. Intermittent California Paid Family Leave

Interprets Article 33H, Section 3300H.4

Background: The California Paid Family Leave program permits employees to receive CA PFL benefits intermittently (referred to herein as “intermittent leave”), meaning the employee does not have to take the six weeks of leave consecutively but instead may spread it out in separate increments within a 12-month period from the employee’s CA PFL “claim effective date.” For example, an employee who adopts a child in March 2017 could take 2 weeks of leave in March, take another 2 weeks of leave in May 2017, and finally take another 2 weeks of leave in September 2017. In such cases, EDD calculates the employee’s weekly benefit amount only one time based on the employee’s earnings preceding his/her claim for PFL leave or Disability Insurance leave (if transitioning from a disability-related pregnancy claim to a PFL claim). The EDD weekly benefit amount stays the same throughout the entirety of the employee’s intermittent leave period, regardless of whether the employee’s wages later change during the course of the employee’s overall CA PFL period.

To apply for intermittent California Paid Family Leave, EDD requires that the employee indicate on his/her EDD CA PFL Claim Form that s/he has “worked or will continue to work” during the CA PFL period. An employee taking intermittent leave is also required inform the EDD of which days were worked or will be worked between the first day of the CA PFL period and the last day of the CA PFL period.

Rule 8.1. Intermittent Leave Notification

Covered Employees who plan to take intermittent CA PFL shall notify their Covered Employer(s) of the schedule of intermittent leave that they have provided to EDD. If the employee’s schedule of intermittent leave changes, the employee shall notify the employer of any such changes.

Rule 8.2. Intermittent Leave: the 180-day Eligibility Period

In the PPLO, the definition of a Covered Employee includes the requirement that the employee “commenced employment at least 180 days prior to the start of the leave period.” For an employee who takes intermittent CA PFL to qualify as a Covered Employee under the SF PPLO during a particular increment of intermittent leave, the employee must have commenced employment with the employer at least 180 days prior to the start of the that particular increment of intermittent leave.

Example: an employee takes 2 weeks of parental leave starting 100 days after his employment commenced. After an additional 80 days have passed, he takes 4 more weeks of leave. The employee would not be entitled to Supplemental Compensation under the PPLO for the first 2 weeks of leave which he took before he had been employed for 180 days, but he would be entitled to Supplemental Compensation for the remaining leave taken after he had been employed 180 days.

Rule 8.3. Intermittent Leave: 8-hour/40% Threshold

Background: To be a “Covered Employee” under the PPLO, (1) an employee must work at least eight hours per week within the geographic boundaries of the City, and (2) at least 40% of the employee’s working hours must be within the geographic boundaries of the City. This eligibility requirement is referred to herein as the “8-hour/40% threshold.”

(a) In cases of intermittent leave, if an employee’s work hours and/or location **change(s)** between his/her first increment of CA PFL and subsequent increment(s) such that the employee no longer satisfies the 8-hour/40% threshold required by the PPLO, the employee may cease to be eligible to receive Supplemental Compensation during the subsequent increment(s) of intermittent leave.

Example A: A Covered Employee takes her first increment of CA PFL for 2 weeks in January 2017 and then a second increment for 4 weeks in August 2017. At the time of her first increment in January 2017, she works full-time 40 hours a week in San Francisco and is thus eligible to receive Supplemental Compensation. In March, her schedule changes such that she only works 4 out of her 40 weekly hours in San Francisco. She would no longer be eligible for Supplemental Compensation for her August increment of CA PFL.

(b) Where the employee’s hours and/or location(s) of work **fluctuate** from week to week (as opposed to a permanent change in work schedule/location as described in subsection (a) above), the calculation of whether the employee meets the 8-hour/40% threshold shall be based on the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the relevant increment of intermittent leave. The calculation shall not include any pay periods during which the employee was on unpaid or partially paid leave and shall not include pay periods earlier than 26 weeks prior to the relevant increment of intermittent leave.

Example B: A Covered Employee has a fluctuating work schedule that changes week to week. She takes her first increment of CA PFL for 2 weeks in January 2017 and then a second increment for 4 weeks in August 2017. In the 12 weekly pay periods prior to the start of her leave in January 2017, she worked an average 50% of her hours in San Francisco and is thus eligible to receive Supplemental Compensation for her January leave. But during the 12 weekly pay periods prior to the August increment of leave, she only worked an average of 20% of her hours in San Francisco. The Employer would no longer be required to (but may choose to continue to) pay the employee Supplemental Compensation for her August increment of CA PFL.

An employer shall not change an employee’s work hours or location during an intermittent leave period for the purpose of evading its obligation to pay Supplemental Compensation under the PPLO.

Rule 8.4. Intermittent Leave: Recalculation of Weekly Supplemental Compensation Amount

Where a Covered Employee takes intermittent CA PFL and the employee’s normal gross weekly wages **increase or remain the same** over the course of the entire CA PFL period, the employer shall only calculate the Supplemental Compensation amount once based on the employee’s wages immediately preceding the first increment of the leave period. Increasing Supplemental Compensation in such circumstances may result in the employee receiving more than 100% weekly wages earned prior to the start of the first increment of CA PFL, and, pursuant to the State Unemployment Insurance Code, could subject the employee to overpayment charges.

Where a Covered Employee's weekly wages **decrease** between the time the employee takes his/her first increment of CA PFL and any subsequent increment, the employer may recalculate the Supplemental Compensation amount to ensure the employee does not receive, during any increment of leave, more than 100% of his/her current normal gross weekly wages. Where the employer chooses to recalculate the Supplemental Compensation amount, the employer shall use the same calculation methods as provided in Section 3300H.4 of the PPLO, and in cases of fluctuating wages, use the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the relevant increment of intermittent leave. The calculation shall not include any pay periods during which the employee was on unpaid or partially paid leave and shall not include pay periods earlier than 26 weeks prior to the start of the relevant increment of intermittent leave.

Example: A Covered Employee takes her first increment of CA PFL benefits for 2 weeks in January 2017 and then a second increment for 4 weeks in August 2017. In April 2017, the employee changes to a part-time position and her weekly wages decrease. Prior to the start of the August 2017 increment of leave, the employer may choose to recalculate the Supplemental Compensation amount based on the employee's current normal weekly wages as of August 2017.

An employer shall not change an employee's wages during an intermittent leave period for the purpose of reducing its Supplemental Compensation obligation under the PPLO.

8.5. Intermittent Leave: Hourly Supplemental Compensation Amount – If a Covered Employee receives CA PFL in increments that are less than 1 week each, the employer shall pay Supplemental Compensation using an average hourly Supplemental Compensation rate. The hourly Supplemental Compensation amount shall be the weekly Supplemental Compensation amount divided by the average number of hours that employee worked per week during the PPLO Lookback Period (see Definitions).

8.6. Intermittent Leave: Covered Employer Threshold – Rule 3 states: "If the size of an employer's workforce fluctuates from week to week, the number of employees that the employer "regularly employs" shall be calculated by taking the average of the number of employees performing paid work for each week included, in part or in whole, in the PPLO Lookback Period (as defined in the Definitions section above)."

If an employee takes intermittent leave, the employer shall determine whether it is a Covered Employer for each increment of intermittent leave.

Example A: An employer has 25 employees in each week of 2017. An employee who has worked for the company for 2 years and works full-time in San Francisco receives 2 weeks of CA PFL benefits in January 2018. Because the employer has more than 20 employees, the employer is a Covered Employer and must pay Supplemental Compensation for that 2-week increment. In April 2018, the company lays off 10 employees, and has only 15 employees. In August 2018, the same employee takes 2 additional weeks of leave and receives CA PFL benefits. The employer would no longer be a Covered Employer at that time, and would not need to pay Supplemental Compensation for that increment of leave.

Example B: An employer has 10 employees in each week of 2017. An employee who has worked for the company for 2 years and works full-time in San Francisco receives 2 weeks of CA PFL benefits in January 2018. Because the employer has fewer than 20 employees, the employer is *not* a Covered Employer and does not need to pay Supplemental Compensation for that 2-week increment. In April 2018, the company grows to 22 employees. In August 2018, the same employee takes 2 additional weeks of leave and receives CA PFL benefits. The employer is now a Covered Employer, and *would* need to pay Supplemental Compensation for that increment of leave.

Rule 9: Appeals - SEC. 3300H.8

Interprets Article 33H, Section 3300H.8

Rule 9.1. Persons receiving a Determination of Violation may file an appeal by requesting a hearing before a neutral hearing officer appointed by the Office of the Controller. The appeal must be submitted in person or by U.S. mail to the Office of the Controller at City Hall, Room 316, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 and must:

- a) be in writing and briefly state the basis for the appeal (this is a brief statement only; the parties will have the opportunity to submit full written briefs later as part of the appeal hearing process),
- b) include a return address,
- c) be accompanied by the penalty amount, by check or by a bond payable to the City and County of San Francisco, and
- d) be received by the Controller's Office within thirty **calendar days** from the date on the Proof of Service accompanying the Determination of Violation. If the thirtieth calendar day falls on a Saturday, Sunday, or Federal Holiday, then the appeal must be received on the following regular business day.

In addition:

- e) A copy of the appeal must also be delivered to the OLSE by mail, in person or by email to pplo@sfgov.org.

The failure of any person to file an appeal in accordance with the provisions of this Section shall constitute concession to the assessment, and the Determination of Violation shall be deemed final upon expiration of the thirty-day period.

(Technical correction 5/18/2017)

Rule 9.2. Within fifteen calendar days of receiving a properly filed request for appeal, the Controller or his or her designee shall appoint a hearing officer (who shall not be employed in the OLSE) to hear and decide the administrative appeal and shall so advise the OLSE and the appellant.

Rule 9.3. After the hearing officer has been assigned, the Controller's Office shall promptly set a date, time and place for a hearing on the appeal. Written notice of the time and place for the hearing shall be served by first class mail.

- a) Service of the notice to the appellant must be made at least ten (10) days prior to the date of the hearing.
- b) The failure of any appellant to appear at the hearing shall constitute concession to the assessment.
- c) Except as otherwise provided by law, the failure to receive a properly addressed notice of the hearing shall not affect the validity of any appeal proceedings under the PPLO and these Rules.

Rule 9.4. The hearing must commence no later than thirty days after service of notice of the hearing and conclude within seventy-five days of such notification, unless that time is extended by mutual agreement of all parties.

Rule 9.5. No later than five days prior to the hearing, the appellant and the OLSE shall submit to the hearing officer, with simultaneous service on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

Rule 9.6. The hearing officer appointed by the Controller or the Controller's designee shall conduct all appeal hearings under this Ordinance. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their serious business affairs, including, but not limited to, the following:

- a) A valid Determination of Violation shall be prima facie evidence of the violation;
- b) The hearing officer may accept testimony relating to the violation and/or to the appropriate means of correcting the violation by declaration under penalty of perjury;
- c) The person responsible for the violation, or any other interested person, may present testimony or other evidence concerning the violation and the means and time frame for correction.

Rule 9.7. Burden of Proof - The appellant shall have the burden of proving that the basis for the Determination of Violation is incorrect.

Rule 9.8. Hearing

Rule 9.8.1. Hearing Record. The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from either party prior to issuing a written decision.

Rule 9.8.2. Findings and Decision. The hearing officer shall make findings based on the record of the hearing and issue a written decision based on such findings within fifteen (15) calendar days of conclusion of the hearing. The hearing officer's decision may:

(a) uphold the issuance of a Determination of Violation and penalties stated therein,

(b) dismiss a Determination of Violation, or

(c) uphold the issuance of the Determination of Violation but reduce, waive or conditionally reduce or waive the penalties stated in a Determination of Violation or any late fees assessed if mitigating circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the evidence presented at the hearing.

The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding civil penalties.

Rule 9.8.3. Finality of Hearing Officer's Decision. The decision of the hearing officer shall be final. If the hearing officer concludes that the violation(s) charged did not occur or that the person charged in the Determination of Violation was not the responsible party, the OLSE shall refund or cause to be refunded the penalty amount to the party that deposited such amount. The hearing officer's decision shall be served on the appellant and the OLSE by certified mail.

Rule 9.8.4. Writ of Mandate. The sole means for an employer to challenge the hearing officer's decision shall be made by filing in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of Civil Procedure.