

**NOTE:** This document is a DRAFT only and subject to change. Check OLSE’s website at [www.sfgov.org/pplo](http://www.sfgov.org/pplo) for updates and information on the December 2, 2016 hearing regarding adoption of PPLO rules.

The sections of the Proposed PPLO Rules that OLSE has updated are highlighted in yellow.

**Paid Parental Leave Ordinance  
San Francisco Police Code Article 33H**

**[DRAFT] RULES**

**Revised December 1, 2016**

**INTRODUCTION**

The Office of Labor Standards Enforcement (“OLSE”) promulgates these Draft 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 mandated to implement and enforce 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 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 55% rate is scheduled to increase to 60% or 70%, depending on income). The PPLO requires Covered Employers to provide employees on leave with “Supplemental Compensation” equal to the difference between the employee’s 55% California Paid Family Leave benefit and the employee’s normal gross weekly wages such that the employee earns 100% of their weekly salary, subject to a weekly maximum benefit amount, during the 6 week leave period. This Supplemental Compensation is available only to employees who are eligible for and receiving California Paid Family Leave benefits for new child bonding.

Under the California Paid Family Leave program, the six week leave may be taken as six consecutive weeks, or it may be spread out over up to a 12-month period (referred to as “intermittent leave”).

The operative date of the PPLO is January 1, 2017. As of that date, the Paid Parental Leave Ordinance requires employers with 50 or more employees to provide partial wage replacement to employees taking leave to bond with a new child under the California Paid Family Leave 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 Police Code.

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

**“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 immediately preceding the start of an employee’s California Paid Family Leave period. 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 S.F. 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 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 completing at least 180 days of employment, his or her prior days of employment shall count towards the PPLO 180-day eligibility period if that employee returns to work for that same employer within one (1) year of his/her most recent separation date.
- b. An employee who separates from employment after completing at least 180 days of employment shall not be required to complete a new 180-day eligibility period for coverage under the PPLO if the employee is rehired by the same employer within one (1) 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 or month to month, the number of employees that the employer “regularly employs” shall be calculated by taking the average of the number of employees of all weeks included, in part or in whole, in the PPLO Lookback Period (as defined in the Definitions section above).

**Example 1:** 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 start 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-subsidary controlled group and (2) a brother-sister controlled group.

**Example 1:** 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.

DRAFT

### 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 scenario where an employee commences Paid Family Leave *before* an employer qualifies as a Covered Employer, but then the employer meets the Threshold Number of Employees and therefore qualifies as a “Covered Employer” at some later time *during* the employee’s leave 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 day the employer satisfies the requirements to qualify as 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 1:** 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. 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 4.1. 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](http://www.sfgov.org/pplo).

The PPL Form includes a requirement that the employee agree, by signing in Step 2 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 promptly submit the San Francisco Paid Parental Leave Form to the Covered Employer(s) following the employee’s receipt of the Notice of Computation.

##### Rule 4.2. 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:

- a) provide the employer with a copy of the “Notice of Computation” from EDD (**Option 1 – Strongly Recommended**);  
or
- b) 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 use Option 1. Use of 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 Option 2 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.

Although not required by the PPLO, an employer has the discretion to require employees to submit a copy of their Notice of Payment from EDD, in addition to the Notice of Computation, to confirm the employee's eligibility for and actual receipt of CA PFL benefits. Employees should retain a copy of their Notice of Payment as proof of their eligibility and actual receipt of benefits.

If an employee chooses **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) The employee must affirmatively notify the employer(s) that s/he has granted such permission to EDD. EDD does not and will not notify the employer. The employee may provide such notice to the employer by checking the appropriate box on Section 1 of the OLSE Paid Parental Leave Form.
- c) After the employer receives notice from the employee that s/he has used Option 2 – either because the employee notified the employer and/or because the employee checked the box on the OLSE Paid Parental Leave Form -- the employer shall contact EDD by phone or by mail to obtain the employee's CA PFL weekly benefit amount.

#### **Rule 4.3. Multiple Employer Reporting**

If a Covered Employee works for more than one Covered Employer, the employee shall complete "Step 3" of the San Francisco Paid Parental Leave Form to report wages from other employers, and submit a copy of the completed Form to each employer. 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 "Step 3" of the Form.



**Rule 5. 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 seven days prior to the beginning of the CA PFL period for bonding with a new child and up to 49 days after the first day of the leave period. As a result, many Covered Employees will not satisfy the preconditions of receiving Supplemental Compensation until after their CA PFL period begins. Some employees may not satisfy the preconditions of receiving Supplemental Compensation until after their CA PFL period ends.

**Rule 5.1. For employees who satisfy the preconditions for receiving Supplemental Compensation (Rule 4) 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 30 days after the last day of the employee’s CA PFL period.

**Rule 5.2. For employees who satisfy the preconditions for receiving Supplemental Compensation (Rule 4) after their CA PFL period has concluded:** the employer shall pay the total Supplemental Compensation no later than 60 days after the Covered Employee satisfies the preconditions for Supplemental Compensation.

## Rule 6. 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 "normal gross weekly wages" 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 gross weekly wages.

- Step 1: Subtract the CA PFL weekly benefit amount from the normal gross weekly wages including gratuities
  - "Normal gross weekly wages" including gratuities are \$500.
  - The employee's weekly CA PFL benefit is \$275 (55% of \$500).
  - Normal gross weekly wages (\$500) - CA PFL benefit (\$275) = \$225.
- Step 2: Determine the share of the "normal gross weekly wages" (including gratuities) that the employer paid to the employee as wages only (not including gratuities).
  - Wages paid by the employer without gratuities (not including gratuities) (\$400) / "normal gross weekly wages" (\$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 7. 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. For example, an employee who gives birth in March 2017 could take 2 weeks of CA PFL 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 first increment of leave, and that 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 to attach to the EDD form a detailed note explaining 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, and the number of hours to be worked each day.

### Rule 7.1. 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 on their EDD CA PFL Claim Form. If the employee’s schedule of intermittent leave changes, the employee shall notify the employer of any such changes.

### Rule 7.2. 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?, the employee must have commenced employment with the employer at least 180 days prior to the start of the first increment of intermittent leave, not subsequent increments.

### Rule 7.3. Intermittent Leave: 8-hour/40% Threshold

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 7.4. 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 earning more than 100% of their weekly wages prior to the start of the CA PFL period and could violate the State Unemployment Insurance Code.

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 is not receiving more than 100% of his/her current normal gross weekly wages during any increment of leave. 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:** A Covered Employee takes her first increment of CA PFL leave 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.

**7.5. 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).

DRAFT

**Rule 8: Appeals - SEC. 3300H.8**

*Interprets Article 33H, Section 3300H.8*

**Rule 8.1.** 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 **(15) calendar days** from the date on the Proof of Service accompanying the Determination of Violation. If the fifteenth (15th) 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](mailto: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 15-day period.

**Rule 8.2.** Within fifteen (15) 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 8.3.** 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 8.4.** The hearing must commence no later than thirty (30) days after service of notice of the hearing and conclude within seventy-five (75) days of such notification, unless that time is extended by mutual agreement of all parties.

**Rule 8.5.** No later than five (5) 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 8.5.** 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 8.6. Burden of Proof** - The appellant shall have the burden of proving that the basis for the Determination of Violation is incorrect.

#### **Rule 8.7. Hearing**

**Rule 8.7.1. 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 8.7.2. 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 8.7.3. 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 8.7.4. Writ of Mandate.** The sole means of 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.