

## General Questions

### a. What is the San Francisco Paid Parental Leave Ordinance?

The San Francisco Paid Parental Leave Ordinance (SF PPLO) generally requires employers who have employees working in San Francisco to provide Supplemental Compensation to employees who are receiving California Paid Family Leave (CA PFL) benefits to bond with a new child, so that the employees receive 100% of their normal weekly wages, up to a weekly maximum benefit, during six weeks of parental leave.

NOTE: There are **two different** parental leave benefit laws that employees may access: (1) the CA PFL law, where the benefit is paid by the State of California's Employment Development Department (EDD); and (2) the SF PPLO where the benefit is paid by the employer. To receive the SF PPLO benefits, an employee must first apply to EDD for benefits under the CA PFL, then submit the required SF PPLO documentation to the employee's employer.

### b. How do the two parental leave laws work?

CA PFL is a state benefits program that provides eligible employees with partial wage replacement for up to six weeks to bond with a newborn, newly adopted child, or foster child. In 2017, the CA PFL program replaces 55% of weekly wages, up to a maximum (\$1,173 in 2017), and in 2018, the wage replacement rate will increase to 60% or 70%, depending on the employee's income. Under the SF PPLO, employers are required to provide employees receiving CA PFL for new child bonding with "Supplemental Compensation" equal to the difference between the employee's CA PFL benefit amount and the employee's normal gross weekly wages such that the employee receives 100% of his/her weekly wages, subject to a weekly maximum benefit amount, for up to six weeks.

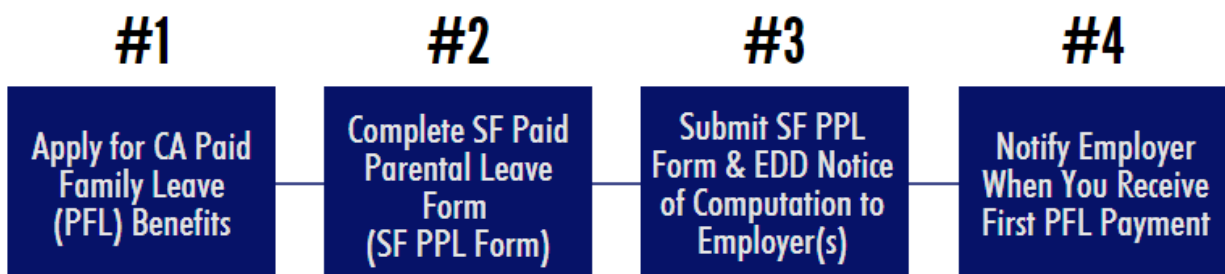
### c. When does the SF PPLO go into effect?

The law took effect on January 1, 2017 for San Francisco employers with 50 or more employees and on July 1, 2017 for employers with 35 or more employees. It will become effective on January 1, 2018 for employers with 20 or more employees.

### d. How does an employee apply for Supplemental Compensation under the SF PPLO?

An employee must complete **four steps** to receive Supplemental Compensation under the SF PPLO from his/her employer.

## **4 Recommended Steps to Apply for SF Paid Parental Leave**



**First**, the employee must apply for CA PFL benefits for new child bonding through the State of

California's EDD. Employees can apply, or file a claim for CA PFL benefits, using [SDI Online](#) or a paper claim form. When filing the claim for CA PFL benefits, OLSE strongly recommends that employees permit the EDD to disclose benefit payment information to the employer(s). This will help ensure prompt payment from the employer(s). For more information on filing a claim for CA PFL benefits, click [here](#) to be directed to the EDD's website or visit: [http://www.edd.ca.gov/Disability/SDI\\_Online.htm](http://www.edd.ca.gov/Disability/SDI_Online.htm)

**Second**, the employee must complete the **San Francisco Paid Parental Leave Form** (SF PPL Form), which can be found [here](#) or at [www.sfgov.org/pplo](http://www.sfgov.org/pplo).

**Third**, the employee must submit the SF PPL Form and provide information on EDD benefits to **each Covered Employer**. The employee should then:

(a) provide the EDD Notice of Computation to each Covered Employer(s). Once the employee files a claim for CA PFL, EDD will send the employee a form entitled Notice of Computation (DE429D) which will set forth the employee's weekly CA PFL benefit amount; and

(b) indicate on the SF PPL form (Section 2 Option 2) that he/she authorized EDD to disclose their weekly benefit amount to the employer(s).

To ensure prompt payment, OLSE **strongly recommends** that employees do both (a) and (b) above.

**Finally**, if requested by a Covered Employer(s), the employee must provide the employer(s) with his/her Electronic Benefit Payment (EBP) Notification (form DE 2500E), which is provided by the CA EDD and verifies that the employee is in fact eligible for and receiving CA PFL benefits. This notice is sometimes referred to as the "Notice of Payment."

## 2) Covered Employers and Covered Employees

### a. Which employers are covered?

Answer: Employers that employ the Threshold Number of Employees worldwide are covered. As of July 1, 2017, the threshold number of employees is 35 or more. As of January 1, 2018, the threshold number of employees is 20 or more.

### b. Which employees are counted towards the Threshold Number of Employees when determining whether an employer is covered?

Answer: All employees are counted, regardless of where they work and regardless of their status or classification as seasonal, permanent or temporary, full-time or part-time, contracted or otherwise.

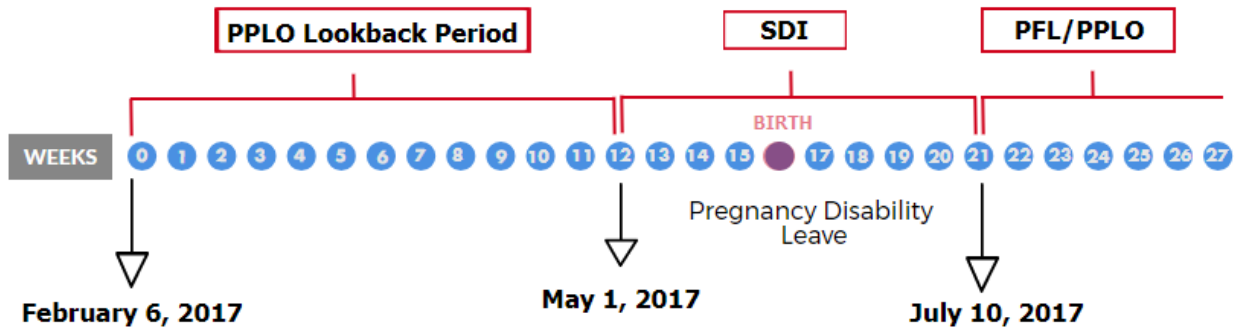
### c. How is the Threshold Number of Employees calculated if the size of an employer's workforce fluctuates?

Answer: An employer is covered if the average number of employees employed during the Lookback Period reaches the Threshold Number of Employees. The Lookback Period is 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 CA PFL benefits period or preceding the first day of any increment of intermittent CA PFL leave (Reminder: for birth mothers, the Lookback Period starts prior to her Pregnancy Disability Leave).

For more information on calculating employer size for employers with a fluctuating workforce, please see Rule 2 in the Rules Implementing the SF PPLO, which can be found [here](#) or at <http://bit.ly/2kn91D6>.

Example: Lookback period for new mother transitioning from Pregnancy Disability Leave to SF PPL:

PPLO Lookback Period below for Employer and Employee Eligibility is February 6, 2017 – April 30, 2017 (12 weeks prior to May 1, 2017, the beginning of pregnancy disability leave).



**d. Are employees at San Francisco International Airport covered by the PPLO?**

Answer: No, because the airport is outside the geographic boundaries of the City.

**e. Does the PPLO cover employees of private businesses operating on federal property within San Francisco?**

Answer: It depends. The PPLO does not cover private businesses located in “federal enclaves” such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA). Otherwise, private businesses located on federal property that is not a federal enclave are generally subject to the “instrumentality” test discussed in Question e below.

**f. Can a governmental entity be a Covered Employer?**

Answer: No.

**e. Are employers who contract with public agencies covered by the SF PPLO?**

Answer: Generally, public sector contractors, such as those that contract with the federal government or the State of California, are covered by the SF PPLO unless they are “instrumentalities” of the public sector agency, in other words, are performing work that is a core function of the public sector agency. If some, but not all, of a company’s employees are instrumentalities of a public sector agency, the employer is still a Covered Employer, and employees who do not function as instrumentalities of the government agency may be Covered Employees.

**3) Employees covered by the SF PPLO and eligibility**

**a. Which employees are covered by the SF PPLO?**

Answer: Only employees who meet **ALL** of the following requirements are covered by the SF PPLO and are entitled to receive Supplemental Compensation:

- The employee commenced work for a covered employer(s) at least 180 days before the start of the employee’s CA PFL payment period;

- The employee works at least eight hours per week in San Francisco for a covered employer;
- The employee works in San Francisco for at least 40% of his or her weekly hours for a covered employer; and
- The employee is receiving CA PFL benefits

**b. Do the requirements of the SF PPLO apply to employees who are covered by a collective bargaining agreement?**

Answer: The requirements of the SF PPLO do not apply to employees who are covered by a collective bargaining agreement if: (1) the agreement expressly waives the requirements of the SF PPLO; or (2) the agreement was entered into before May 21, 2016 (the effective date of the SF PPLO), unless the agreement was amended or extended.

**c. Is a father who is receiving CA PFL benefits for “caregiving for an ill family member” when his wife is recovering from childbirth eligible for supplemental compensation under the SF PPLO?**

Answer: No. An employee is only entitled to receive supplemental compensation under the SF PPLO when he or she is receiving CA PFL benefits for *new child bonding*.

#### **4) Calculating & Making Supplemental Compensation Payments**

**a. How much Supplemental Compensation must an employer pay an employee under the SF PPLO?**

Answer: The employer must provide Supplemental Compensation in the amount of the difference between the employee’s normal weekly wage and the CA PFL benefit amount, up to a cap.

Please see detailed instructions [here](#) or visit <http://sfgov.org/olse/paid-parental-leave-calculations>. The simplest scenario is an employee with one employer whose wages have not changed in the last 18 months, and who earns less than the CA PFL maximum amount or cap. In that scenario, EDD will pay approximately 55% of her weekly wages, and her employer will pay 45% of her wages under the SF PPLO for the six weeks of leave. However, on January 1, 2018, the EDD wage replacement percentage will increase to 60% or 70%, depending on the employee’s income.

In 2017, the maximum CA PFL benefit is \$1,173 per week. If an employee receives the maximum CA PFL benefit, the employer must provide the employee with \$960 per week in Supplemental Compensation under the SF PPLO. In this scenario, the employee receives a total of \$2,133 per week in benefits, 55% of which is paid by the CA EDD under the CA PFL program and 45% of which is paid by the employer, as required by the SF PPLO.

**b. Are gratuities or tips, as defined in the California Labor Code, part of an employee’s normal weekly wages, for purposes of calculating the Supplemental Compensation owed under the SF PPLO?**

Answer: No.

**c. Is a “restaurant service charge” considered a tip and must it be included in normal weekly wage and supplemental compensation calculations?**

Answer: A mandatory service charge is not considered a gratuity but may be considered wages if the funds are distributed by the employer to employees. Please see [California Division of Labor Standards FAQ 6](#).

**d. Can an employer withhold funds for retirement plans and health insurance premiums from the supplemental compensation payment?**

Answer: Yes.

**e. Do employers have to pay Supplemental Compensation under the SF PPLO during an employee's one-week waiting period under the CA PFL program?**

Answer: No. (Note that in 2018, the one-week waiting period for CA PFL benefits will be eliminated).

**5) Use of Vacation, Sick Time, and PTO**

**a. Can an employer apply an employee's accrued, unused vacation leave toward the cost of Supplemental Compensation under the SF PPLO?**

Answer: An employer must get the employee's agreement to apply up to two weeks of accrued, unused vacation leave towards covering the amount of Supplemental Compensation owed. However, *if the employee does not agree, the employer is not required to pay Supplemental Compensation.*

Additionally, the California Unemployment Insurance Code allows an employer to require an employee to take up to two weeks of unused, accrued vacation leave prior to the employee's initial receipt of CA PFL benefits. Note that if the employer chooses to impose this requirement, the employer is not relieved of its obligation to provide the required six weeks of Supplemental Compensation under the SF PPLO. The EDD will consider one of those weeks as the employee's waiting period. (Note that the waiting period will be eliminated for CA PFL benefits in 2018.)

**b. Can an employer apply an employee's sick time toward covering the cost of Supplemental Compensation?**

Answer: No. An employer may not use an employee's sick time to cover the cost of the Supplemental Compensation.

**c. Can an employer apply an employee's accrued, unused Paid Time Off (PTO) toward covering the cost of Supplemental Compensation?**

Answer: It depends. If the PTO plan differentiates between vacation time and sick time, the employer may, with the agreement of the employee, apply up to two weeks of accrued, unused PTO time that is designated as vacation time. (However, as noted in response to the previous question, if the employee refuses to agree, then the employer need not pay Supplemental Compensation.) The employer cannot use any PTO time that is designated as sick time to meet its supplemental compensation obligation.

For PTO plans that do not distinguish between or track vacation or sick time, the employee must allow the employer to apply up to two weeks of accrued, unused PTO in excess of 72 hours. (72 hours of PTO cannot be used to satisfy the employer's Supplemental Compensation obligation due to the intersection of provisions of the SF PPLO and the San Francisco Paid Sick Leave Ordinance (PSLO)).

If the employee does not allow the employer to use accrued PTO over the 72 hours, the employer is not required to pay the Supplemental Compensation.

Examples:

Example 1. An employer with 20 employees has a PTO policy that complies with Section 12W.3(e) of the PSLO. An employee has accrued 72 hours of PTO at the start of her CA PFL. The employee need not

agree to allow the employer to apply any PTO to satisfy the employer's Supplemental Compensation obligation.

Example 2. Same facts as in Example #1, except that the employee has accrued 82 hours of PTO at the start of her CA PFL. The employee must agree to allow the employer to apply up to 10 hours of PTO to satisfy the employer's Supplemental Compensation obligation.

Example 3. Same facts as in Example #1, except that the employee has accrued 160 hours of PTO at the start of her CA PFL. The employee must agree to allow the employer to apply up to two weeks of PTO (80 hours for a full-time employee) to satisfy the employer's Supplemental Compensation obligation.

**c. If an employer requires an employee to use two weeks of vacation time prior to CA PFL for new child bonding, can the employer still require two weeks of vacation to be used to cover supplemental compensation obligations?**

Answer: Yes, provided the employee has four weeks of accrued, unused vacation.

**d. The SF PPLO states that, to be eligible to receive Supplemental Compensation, a Covered Employee must agree to allow a Covered Employer to apply up to "two weeks" of unused vacation leave. What constitutes a "week" for part-time employees or employees whose hours fluctuate?**

Answer: For part-time employees, a "week" is a regularly scheduled week of work. For example, for an employee who works 32 hours per week, a "week" is 32 hours. For employees whose hours fluctuate, a "week" is the average number of hours worked per week during the Lookback Period, which is defined on page 2 of the Rules.

**e. If an employee does not have any accrued, unused vacation at the start of his/her leave, is the employer still required to provide Supplemental Compensation?**

Answer: Yes. In these circumstances, the employer is required to pay the total Supplemental Compensation and may not offset its obligation with the employee's vacation time (including vacation time that the employee accrues after returning from parental leave).

**f. To be a Covered Employee under the SF PPLO, one of the requirements is that an employee must have started working for the Covered Employer "at least 180 days prior to the start of the leave period." When does the leave period start?**

Answer: The leave period starts on the first day for which the employee is paid CA PFL benefits. Currently, this is after a one-week waiting period, except there is no such waiting period for birth mothers who are transitioning from state disability insurance for pregnancy disability leave. This means a non-birth parent will not receive CA PFL benefits for the first seven calendar days she is off of work to bond with a new child. Thus, the employee's leave period will start on the eighth day after the employee begins receiving CA PFL payments. Starting January 1, 2018, there will no longer be a one-week waiting period for CA PFL, and non-birth parents will be eligible for CA PFL benefits on the first day they are off work to bond with a new child.

## **6) Interaction of PPLO with San Francisco Health Care Security Ordinance**

**a. Are employers required to make Health Care Expenditures pursuant to the HCSO when an employee is on leave to bond with a new child and receiving Supplemental Compensation under the**

**PPLO?**

Answer: So long as the employee continues to satisfy the definition of a “Covered Employee” under the HCSO, the employer is required to make Health Care Expenditures for all Hours Payable. Because the employer pays a portion of the employee’s normal weekly wages as Supplemental Compensation, the employer is required to make Health Care Expenditures for a corresponding portion of the average weekly hours. If the number of hours is a fraction of an hour, the employer should round to the nearest full-hour increment.

Example. An employer is paying an employee Supplemental Compensation equal to 45% of the employee’s Normal Gross Weekly Wages to comply with the PPLO. The employee normally works 40 hours per week. The employer must make Health Care Expenditures for 45% of the employee’s weekly hours, or 18 hours.

**b. If an employee is on leave to bond with a new child and receiving Supplemental Compensation under the PPLO, and the employee ceases to be a “Covered Employee” under the HCSO (for example because the employee did not regularly perform eight hours of work during a quarter), must the employer continue to make Health Care Expenditures for that employee?**

Answer: No.