

SPECIAL SAN FRANCISCO – THERE TRULY IS NO PLACE ELSE LIKE IT

The City and County of San Francisco have numerous laws that are specific to that jurisdiction. Except for the commuter benefits, all of these laws are administered and enforced by the San Francisco Office of Labor Standards Enforcement (OLSE). More information is available on the OLSE Web site and the CEA Web site <https://www.employers.org/hr-answers/additional-resources/>.

We have summarized these laws and requirements below. Specifically, San Francisco has the following laws that differ from the rest of the state and a number are based on the number of employees your organization has (noted in parentheses):

- San Francisco Minimum Wage Ordinance (All employers)
- San Francisco Paid Sick Leave Ordinance (All employers)
- Health Care Security Ordinance (20 + employees)
- Family Friendly Workplace Ordinance (20 + employees)
- Fair Chance Ordinance (“Ban the Box”) (20 + employees)
- Paid Parental Leave Ordinance (20 + employees)
- San Francisco Commuter Benefits Ordinance (20 + employees)
- Formula Retail Civil Rights Ordinances
- Lactation in the Workplace
- Consideration of Salary History Ordinance

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San Francisco Minimum Wage

All employers (regardless of where the employer is located) with employees in San Francisco must pay employees who work two (2) or more hours a week the San Francisco minimum wage for the hours worked **in** San Francisco.

The current San Francisco minimum wage (since July 1, 2018) is \$15.00 per hour. Annual minimum wage increases will be based on the Consumer Price Index starting July 1, 2019.

Please note that there are numerous different minimum wage ordinances throughout the state of California. You must comply with each jurisdiction where you have employees working.

Minimum Wage Required Notices

Employers subject to the San Francisco minimum wage must post the “Official Notice – San Francisco Minimum Wage,” issued by the OLSE. It is updated when the rate changes and is available at <http://sfgov.org/olse/minimum-wage-ordinance-mwo>.

Minimum Wage Issues

- Employees who work temporarily in the City and/or County of San Francisco two (2) or more hours a week must be paid the San Francisco minimum wage for those hours.
 - Example: A nonexempt employee is driving from Oakland to San Francisco to deliver a package. There is an accident on the Oakland Bay Bridge just past Treasure Island and she is sitting on the bridge for one hour. She then delivers the package to the Ferry Building, parking on the Embarcadero, which takes about one hour. She then drives back to Oakland via the Oakland Bay Bridge. The two-plus hours she spent in the City and County of San Francisco is payable at the San Francisco minimum wage.
- If an employee earns multiple rates of pay (state of California and San Francisco for example), employers must calculate “regular rate of pay” for purposes of overtime. The regular rate is the “weighted average” which is determined by dividing their total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. CEA members can access the “Calculating Overtime for 2 Pay Rates” form on our website, www.employers.org.
 - Example: For example, if an employee works 32 hours in Daly City at \$12.00 an hour and 10 hours during the same workweek at \$15.00 an hour, their weighted average (and thus the regular rate for that workweek) is \$12.72. This is calculated by:
 - adding their \$502 straight time pay for the workweek (32 hours x \$12.00/hour = \$384) + (10 hours x \$15.00/hour = \$150) = \$534,

- and dividing it by the 42 hours worked, equals \$12.72.
- Dividing \$12.72 by 2 determines the amount of overtime premium at time and “one-half,” or \$6.36;
- Exemption from overtime minimum salary is based on CA minimum wage, and is NOT impacted by local minimum wage ordinances.
 - California minimum salary is based upon two times the state minimum wage; or the federal minimum salary, whichever is higher.

San Francisco Paid Sick Leave

Since 2007, San Francisco’s Paid Sick Leave Ordinance (“PSLO”) has required that all employers with employees in San Francisco must provide paid sick leave to their employees (regardless of where the employer is located). For staffing agencies, both the hiring employer and the agency are responsible for compliance.

All employees who work in the City and/or County of San Francisco must earn sick leave hours for the time they work in San Francisco. Employees who work less than 56 hours a year in San Francisco, including attendance at conferences, are not eligible for San Francisco paid sick leave.

On May 7, 2018, San Francisco’s Office of Labor Standards Enforcement published revised rules for implementation of PSLO. Employers with pre-dated policies and procedures should review them to ensure continued compliance with the ordinance.

Please note: there are numerous paid sick leave ordinances throughout the state of California. When the employee is covered by multiple ordinances, you must comply with the ordinance that provides the most benefit to the employee.

Example: Our driver in the minimum wage example who got stuck on the Oakland Bay Bridge to deliver a package to the Ferry building would not be eligible for San Francisco paid sick leave unless she works 56 hours a year in San Francisco.

Paid Sick Leave Required Notice

All employers with employees in San Francisco must post the “Official Notice – San Francisco Paid Sick Leave” available at <http://sfgov.org/olse/PAID-SICK-LEAVE-ORDINANCE-PSLO>.

Paid Sick Leave – Providing Benefit

- Employers with 10 or more employees (working at all locations, including outside of San Francisco) must provide 1 hour of paid sick leave for every 30 hours worked in the City and County of San Francisco. Accrued sick leave can be capped at 72 hours.
- Employers with less than 10 employees must allow employees to accrue up to at least 48 hours; or

Provide an “advance” of 24 hours or 3 days of paid sick leave to comply with the State law “up-front option,” and later allow employees to accrue up to 40 hours to comply with SF law.

- Employees begin to accrue again anytime they fall below the accrual cap.

Example: The ordinance says, “there is no limit on how much sick leave an employee may use in a year.” So, if you have an employee start the year with 72 hours of accrued sick leave, and they begin to use it in sufficient amounts beginning on the first pay period, they will be accruing hours back right away. Working 2080 hours in the year, this employee will have accrued 69.334 hour, which they could also have used. Let’s see, 72 and 69 is 141. For 8-hour days, that amounts to just over 17 and ½ days.

- The ordinance states 1 hour for every 30 hours worked. Per the OLSE, you count ALL hours worked (overtime, etc.).
- San Francisco employers cannot require employees to use sick leave in increments greater than 1 hour (State law – 2 hours).
- The employer must establish a procedure for employees to communicate absences to the employer.
- Eff. January 1, 2017: Employers may provide a lump sum, instead of accrual, at the beginning of each 12-month period “so long as the employee can accrue additional paid sick leave after working enough hours to have accrued the amount allocated up front.”
- San Francisco requires employers to maintain records for sick leave for 4 years (State law: only 3 years).
- Ordinance allows use of sick leave for a “designated person” of the employee’s choosing.

Health Care Security Ordinance (HCSO)

Covered Employers must meet certain obligations, including but not limited to satisfying the Employer Spending Requirement by making requisite health care expenditures on behalf of their Covered Employees.

Health Care Security Ordinance – Covered Employers/Employees

The HCSO defines three categories of employers:

1. Large Business: an employer for which an average of 100 or more persons per week perform work for compensation during a quarter. This category also includes nonprofit corporations.
2. Medium-size Business: an employer for which an average of 20 to 99 persons per week perform work for compensation during a quarter. This category also includes only those nonprofit corporations for which an average of 50 to 99 persons per week perform work for compensation during a quarter.
3. Small Business: an employer for which an average of 19 or fewer persons per week perform work for compensation during a quarter.

When counting employees:

- “Person” is defined as *all persons performing work for compensation during a quarter, 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.*
- The category counts are not limited to Covered Employees.
- You must include both those who work within San Francisco and those who work outside of San Francisco.
- You must include owners performing work for compensation (including money, benefits, or in-kind compensation).

“Covered employee” = employed for more than 90 days and who regularly works at least 8 hours per week in San Francisco.

Health Care Security Ordinance - Notice Requirement

- Covered employers must post the official HCSO notice prepared by OLSE in all workplaces with covered employees (<http://sfgov.org/olse/health-care-security-ordinance-hcso>)
- Recommended to print on 8.5” x 14” paper, in color.
- Covered employers required to post the Official Notice in English, Spanish, and Chinese (official OLSE Notice includes these three languages) and any language spoken by 5% of employees at the workplace or job site (other translations available).
- For your convenience, the back of the Official OLSE Notice includes translations into Tagalog, Russian, and Vietnamese. If more than five percent of the workers at the workplace or job site speak any other language, the employer is responsible for translating and posting in that language.
- **There is a \$25 fine/day/Notice is not posted/location.**

Health Care Security Ordinance – Spending Requirement

- You may choose how they spend the money – make sure to spend at least the minimum.
- You may pay for health insurance, make payments to the City’s health benefit program (called the City Option), etc.

By the way, if you are an owner working for your business (& few owners do not), you must count yourself for total headcount when determining your required rate. But you don’t have to spend money on your behalf (you can have your own, separate plan).

Here, too, ALL hours worked, including overtime, must be counted.

Health Care Security Ordinance – Maintain Records

Covered employers must maintain records sufficient to establish compliance:

- Records sufficient to establish compliance with the employer spending requirement.
- Itemized pay statements, as required by California Labor Code Section 226;
- The employee's address, telephone number, date of first day of work;
- Records of Health Care Expenditures made, including calculations of Health Care Expenditures required under the law for each Covered Employee and proof documenting that such expenditures were made each quarter of each year;
- Documentation supporting the exemption of an employee from coverage, such as a signed Employee Voluntary Waiver Form for each employee for whom the employer is claiming an exemption from the Employer Spending Requirement; and
- Covered Employers must also demonstrate that the Required Health Care Expenditures were made quarterly, unless they meet the requirements of the exception for self-funded plans.
- Maintaining the records establishes compliance, BUT you must submit the Annual Reporting Form on time or be subject to a \$500 fine per quarter. The Form is available as a fill-in at the OLSE website.

Health Care Security Ordinance – Annual Reporting

- Covered Employers must submit an Annual Reporting Form to the OLSE by April 30th of each year.
- Online submission of web-based form – available on the HCSO website by April 1 each year. Covered Employers who fail to make a timely submission will be in violation of the HCSO and shall be subject to penalties.
- OLSE strongly encourages employers to review the Instructions for the Annual Reporting Form to ensure compliance with this reporting requirement.
- Sign up to receive email notifications when the Annual Reporting Form is available, <http://sfgov.org/olse/email-sign-employers-20-or-more-employees>.

If your premium payments don't meet the hourly minimum, you must make up the shortfall. Because of the quarterly reporting requirement, make it up quarterly.

Family Friendly Workplace Ordinance

The Family Friendly Workplace Ordinance (FFWO) gives certain employees the right to request a flexible work arrangement and gives the employer the right to refuse for legitimate business reasons.

Covered Employer

Covered employers are employers with 20 or more employees.

Covered Employees

Employees employed for six (6) or more months and work at least eight (8) hours a week on a regular basis are eligible under the FFWO. Covered employees may request a flexible or predictable working arrangement to assist with caregiving responsibilities for:

- a child or children under the age of eighteen;
- a person or persons with a serious health condition in a family relationship with the employee;
- a parent (age 65 or older) of the employee.

Frequently Asked Question under the FFWO

Q: What if the number of employees fluctuates or the employer expands to more than 20 employees?

A: If the number of employees fluctuates, the employer is covered if it had an average of 20 employees performing paid work per week during the preceding calendar quarter. For this one, Owners are not counted, just employees, so long as each employee has worked a total of six (6) months for the employer (even with breaks in service, rehires, etc.).

Family Friendly Workplace Ordinance – Notice Requirement

- Post required notice in conspicuous location.
- Post in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.
- Poster available for download:
<http://sfgov.org/olse/sites/default/files/FileCenter/Documents/11256-FFWO%20Official%20Notice.pdf>

Family Friendly Workplace Ordinance - Process

- Employee requests in writing.
 - Sample request form available at: <http://sfgov.org/olse/FAMILY-FRIENDLY-WORKPLACE-ORDINANCE-FFWO>
- You have 21 days to:
 - Meet with the employee
 - Additional 21 days to approve or deny.
- Written denial required: must provide a bona fide business reason and a right to request reconsideration.

- If request for reconsideration: employee must submit written request within 30 days.
- Employee may request FFW twice in a 12-month period.
- Unless employee has a major life event necessitating accommodation – can get an additional request.
 - “Major life event” is birth of an employee’s child, the placement with an employee of a child through adoption or foster care, or an increase in an employee’s caregiving duties for a person with a serious health condition who is in a family relationship with the employee

Q: For what reason(s) can an employer deny an employee’s request under the FFWO?

A: A department may deny a request based on a bona fide business reason, including, but not limited to:

- The identifiable cost of the change in a term or condition of employment requested in the application, including, but not limited to, the cost of productivity loss, retraining or hiring employees, or transferring employees from one facility to another.
- Detrimental effects on the ability to meet customer or client demands
- The inability to organize work among other employees
- The insufficiency of work to be performed during the time the employee proposes to work.

Family Friendly Workplace Ordinance - Recordkeeping

Employers must maintain for at least three years:

- Employees’ requests for a flexible or predictable working arrangement
- Documentation of meetings about employees’ requests such as emails, meeting minutes, notes.
- Your responses granting or denying flexible or predictable working arrangements
- Employees’ requests for reconsideration
- Requests for verification of caregiving responsibilities
- Verification of caregiving responsibilities
- You must also allow OLSE access to the required records to monitor compliance with the FFWO.

Family Friendly Workplace Ordinance - Penalties

- Administrative penalty up to \$50.00 payable to the employee or person whose rights were violated

- Penalty assessed for each day or portion thereof that the violation occurred or continued to occur.

Fair Chance Ordinance

*Please Note: The San Francisco Board of Supervisors passed an amendment to the Fair Chance Ordinance (FCO) in April 2018. The legislation took effect on **October 1, 2018**. The amendment expands the coverage of the ordinance to **all employers with 5 or more employees**. The OLSE has posted a table summarizing the changes to the ordinance at: https://sfgov.org/olse/sites/default/files/Document/2018%20FCO%20Summary%20of%20Changes%20for%20Employers%202_0.pdf*

More often referred to as “Ban the Box,” the Fair Chance Ordinance (FCO) prohibits San Francisco employers with five (5) or more employees from asking about arrest and criminal records on the job application. The FCO does NOT limit an employer’s ability to hire the most qualified individual or run background checks on potential employees. Staffing firms have joint liability under the FCL.

The law applies to employees and applicants who will perform a “substantial part” of their work in San Francisco. OLSE interprets a “substantial part” as working an average of eight (8) hours per week in San Francisco. An employer may look to previous years to determine if a position will involve an average of eight (8) hours of work a week in San Francisco. If the position or employer is new, the employer should evaluate the job description and the work that is expected of that position, before making a reasonable, good faith determination as to whether the position would fall within the 8 hours per week average and thus be covered under the FCO.

Fair Chance Ordinance – Notice Requirement

- Post “Notice to Job Applicants and Employees – Fair Chance Ordinance” available in multiple languages <http://sfgov.org/olse/fair-chance-ordinance-fco>
- Include in job postings that may reach SF applicants: “Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records.”

Fair Chance Ordinance - Process

- Use SF specific job application.
- Provide a copy of the FCO poster to applicant.
- After you either (1) conduct a live interview with the applicant, or (2) make a conditional offer of employment to the applicant – you may:
- Run a background check; and
- Ask about unresolved arrests or conviction history.

- Conduct individualized assessment (job related?) if using arrest/conviction info.
- If deny employment – provide copy of background report.

Fair Chance Ordinance – Off Limits

- An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction for subsequently decriminalized behavior;
- A conviction that is more than 7 years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor—such as an infraction.

Fair Chance Ordinance - Recordkeeping

- Maintain for three years:
 - Proof OLSE FCO Notices were posted as required
 - Background check reports obtained
 - Copies of job ads and postings, job application forms distributed, job applications submitted by applicants
 - Documentation of employment interviews including forms, notes, and interview questions
 - Any information provided to applicant regarding potential adverse action
 - Any information received from an applicant or employee in response to a background check
 - Documentation of all individualized assessments conducted
 - Any documentation of rehabilitation or mitigating factors submitted by applicants or employees
 - Documentation of adverse actions based on unresolved arrest or conviction records
 - Documentation of hiring or promoting individuals after considering unresolved arrest or conviction records.

Fair Chance Ordinance – Reporting Requirements

- Annual reporting form and instructions available online <http://sfgov.org/olse/fair-chance-ordinance-fco>
- Sign up for e-mail updates online <http://sfgov.org/olse/fair-chance-ordinance-fco>.

Fair Chance Ordinance – Penalties

Violation can be failure to post, recordkeeping, retaliation, etc. Fines for repeated violations can be as much as \$2,000. OLSE may also bring a civil action against the employer. Upon prevailing, available

remedies include: reinstatement, back pay, benefits and pay unlawfully withheld, liquidated damages of \$50 per individual for each day that the individual's rights under this ordinance were violated, injunctive relief, and attorney's fees and costs.

| Violation | Action Taken By OLSE |
|-----------------------|--|
| First Violation | A penalty of no more than \$500 may be assessed. |
| Second Violation | A penalty of no more than \$1,000 may be assessed. |
| Subsequent Violations | A penalty of no more than \$2,000 may be assessed. |

Paid Parental Leave

- Requires employers with 20 or more employees to *supplement* state-provided (PFL) benefits for new parents in an amount such that the California Paid Family Leave wage replacement plus the supplemental compensation equals 100% of the employee's gross weekly wage.
- Multiple employers: In cases where an employee has multiple Covered Employers, the Supplemental Compensation amount is apportioned between or among the Employers based on the percentage of the employee's total gross weekly wages received from each employer. In cases where an employee works for a Covered Employer and a non-Covered Employer, the Covered Employer is responsible only for its percentage of the employee's total gross weekly wages.
- Instructions, forms and calculators are available at <http://sfgov.org/olse/paid-parental-leave-ordinance>.

Paid Parental Leave – Covered Employee

- A "Covered Employee" entitled to Supplemental Compensation under the PPLO is an employee:
 - who began employment with the Covered Employer at least 180 days prior to the start of the leave period;
 - who performs at least eight hours of work per week for the employer in San Francisco;

- at least 40% of whose total weekly hours worked for the employer are in San Francisco; and
- who is eligible to receive paid family leave compensation under the California Paid Family Leave law for the purpose of bonding with a new child.

Paid Parental Leave – Notice Requirements

- The mandatory poster is available at <http://sfgov.org/olse/paid-parental-leave-ordinance>.
- Employers must post the notice in a conspicuous place at any workplace or job site where any Covered Employee works in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

Paid Parental Leave - Recordkeeping

- Covered Employers shall retain records documenting Supplemental Compensation paid to employees for three years.
- Employers must allow the OLSE access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance.

Paid Parental Leave – Other Info

- Covered employees terminated during the benefit period must continue to receive supplemental compensation.
- Terminations of covered employees within 90 days of benefit period are presumed retaliatory unless clear and convincing evidence shows otherwise.
- Cannot require employees to use vacation after PFL waiting period.
- Employee who quits within 90 days after benefit period must repay employer upon written request.

Paid Parental Leave - Penalties

- If any Supplemental Compensation was unlawfully withheld, the dollar amount withheld multiplied by three, or \$250.00, whichever amount is greater, must be paid to the employee.
- Failure to post or other harms: \$50.00 to each employee or person whose rights were violated for each day or portion thereof that the violation occurred or continued.
- Other action OLSE deems necessary.

San Francisco Commuter Benefits

Another ordinance, somewhat different than the Bay Area Commuter Benefits Program

Who Needs to Comply?

- Businesses with a location in San Francisco (including non-profit organizations)
- Businesses with 20 or more employees nationwide

Who is Covered?

- Any person who works at least 8 hours per week in the previous calendar month.
- Qualifies as an employee entitled to payment of a minimum wage

How to Comply

1 - Pre-Tax Benefit – A monthly pre-tax deduction, up to \$255/month, to pay for transit or vanpool expenses.

2 - Employer-Paid Benefit – A monthly subsidy for transit or vanpool expenses equivalent to the price of the San Francisco Muni Fast Pass (including BART travel).

3 - Employer-Provided Transportation – A company-funded bus or van service to and from the workplace.

4 - Any combination of the above.

For more information, please contact CommuteSmart at (415) 355-3727 or CommuteSmart@sfgov.org

Once again, fines apply to violations.

And yes, they are following up with employers who do not submit an annual report. You have a business account number, and it is audited.

Formula Retail Employee Rights Ordinances

- The San Francisco Board of Supervisors passed two ordinances addressing scheduling, hours and retention at formula retail establishments on November 25, 2014. The operative date for both ordinances was October 3, 2015.
- Applies to chain stores with at least 40 formula retail establishments worldwide and 20 or more employees in San Francisco as well as their janitorial and security contractors.
- See <http://sfgov.org/olse/formula-retail-employee-rights-ordinances>

Lactation in the Workplace

The San Francisco Board of Supervisors passed the Lactation in the Workplace Ordinance on July 20, 2017, and the legislation was signed by Mayor Lee on July 30, 2017 and is effective January 1, 2018. More information and a Model Policy and Accommodation Request Form are available at <http://sfgov.org/olse/lactation-workplace>.

Consideration of Salary History Ordinance

The San Francisco Board of Supervisors passed the "Employer Consideration of Applicant's Salary History Ordinance" or "Consideration of Salary History Ordinance" on July 11, 2017, and the legislation was signed by Mayor Lee on July 14, 2017 and became effective July 1, 2018. The Ordinance applies to employers in San Francisco and to the City and County of San Francisco's contractors and subcontractors.

The "Consideration of Salary History Ordinance" bans employers, including City contractors and subcontractors, from considering current or past salary of an applicant in determining whether to hire an applicant or what salary to offer the applicant. The ordinance also prohibits employers from asking applicants about their current or past salary or disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available.

More information is available at <http://sfgov.org/olse/consideration-salary-history-ordinance>.