

San Francisco Ordinances



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ON THE FRONT LINES OF WORKPLACE LAWSM

Introduction



- All Employers
 - Minimum Wage Ordinance
 - Paid Sick Leave Ordinance
 - Lactation in the Workplace Ordinance (effective January 1, 2018)
 - Consideration of Salary History (effective January 1, 2018)

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Introduction



- Employers with 20+ Employees (in any location)
 - Health Care Security Ordinance
 - Family Friendly Workplace Ordinance
 - Fair Chance Ordinance
 - Paid Parental Leave Ordinance (effective January 1, 2018)
- Formula Retail Establishments
 - Hours and Retention Protections for Formula Retail Employees Ordinance
 - Fair Scheduling and Treatment of Formula Retail Employees Ordinance

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San Francisco Ordinances Applicable to: All Employers



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San Francisco Minimum Wage Ordinance



- \$14.00 per hour
 - Increase to \$15 per hour on July 1, 2018
- Applies to all employees working within San Francisco
 - At least two (2) hours of work per week in San Francisco
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce



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San Francisco Paid Sick Leave Ordinance



- Applies to all employees who perform work in San Francisco
 - Full time; part time; temporary
 - Exemption for employees performing fewer than 56 hours per year within San Francisco
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce



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San Francisco Paid Sick Leave Ordinance: Accrual



- Accrual begins immediately upon employment
- Rate: One (1) hour of paid sick leave for every thirty (30) hours worked
- No Front-Loading
 - San Francisco treats front-loaded sick leave as an *advance*
 - Still required to track
- Caps
 - Not annual
 - Small Businesses (<10 employees): 40 hours
 - Other Businesses: 72 hours

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San Francisco Paid Sick Leave Ordinance: Use



- No use caps
- Can limit to after 90 days of employment
- May be used for:
 - Employee's own medical care, treatment, diagnosis
 - Family member
 - "Designated Person"

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San Francisco Lactation in the Workplace Ordinance



- Effective January 1, 2018
- Requirements:
 - Provision of breaks
 - Location for lactation
 - Sets minimum standards
 - Policy regarding lactation and process for employee to request accommodation



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San Francisco Consideration of Salary History Ordinance



- Effective January 1, 2018
- Applies to any person ("applicant") applying for work to be performed in San Francisco

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San Francisco Consideration of Salary History Ordinance



- Requirements:
 - Bans employers from considering current or past salary in determining whether to hire an applicant or what salary to offer the applicant
 - Prohibits employers from asking applicants about current or past salary
 - Prohibits disclosure of current/former employee's salary history without express authorization
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce

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San Francisco Ordinances Applicable to: Employers with 20+ Employees (in any location)



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San Francisco Healthcare Security Ordinance



- Applies to all employees who have been employed at least 90 days and regularly work eight (8) hours/week in San Francisco
- Sets forth Employer Spending Requirement (ESR) for healthcare expenditures on behalf of all covered employees
- Requires that employers maintain records to establish compliance with HCSC
- Requires submission of annual reporting form
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce

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San Francisco HCSO: Employer Spending Requirement



- Payments for health, dental, and/or vision insurance
- Contributions to programs that reimburse employees for out-of-pocket health care costs
- City Option

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San Francisco HCSO: Employer Spending Requirement



Employer Size	Number of Employees	2017 Expenditure Rate	2018 Expenditure Rate
Large	All employers with 100+ employees	\$2.64 per hour payable	\$2.83 per hour payable
Medium	Businesses with 20-99 employees Nonprofits with 50-99 employees	\$1.76 per hour payable	\$1.89 per hour payable
Small	Business with 0-19 employees Nonprofits with 0-49 employees	Exempt	Exempt

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San Francisco HCSO: Payments for Insurance



- Minimum expenditure calculated by multiplying total number of Hours Payable to the employee in a quarter by applicable Health Care Expenditure Rate
- Hours Payable:
 - Hours for which person is paid for work performed and
 - Hours for which a person is entitled to be paid wages (vacation, PTO, sick leave)
 - Cannot exceed 172 hours in a month

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San Francisco HCSO: City Option



- Allows employers to contribute to City's public benefit program on behalf of employees
- Can be deposited in Medical Reimbursement Account, or applied toward employee's Healthy San Francisco enrollment
- Must provide employees with Employee Health Care Payment Confirmation, available in English, Spanish, Chinese, and Tagalog

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San Francisco Family Friendly Workplace Ordinance



- Applies to employees who:
 - Have been employed by employer for at least six (6) months; and
 - Regularly works at least eight (8) hours per week in San Francisco
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce

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San Francisco FFWO: Requirements



- Employers must allow employees to request a flexible or predictable working arrangement to assist with caregiving responsibilities for:
 - Child/children under the age of 18
 - Family member with a serious health condition
 - Spouse, domestic partner, child, parent, sibling, grandchild, grandparent
 - A parent age 65+ of the employee

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San Francisco FFWO: Requests



- Request may include:
 - Number of hours employee is required to work
 - The times when the employee is required to work
 - Where the employee is required to work
 - Work assignments or other factors
 - Predictability in work schedule

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San Francisco FFWO: Process



- Must meet with employee within 21 days of request
- Must provide employee with response within 21 days of meeting
- Must explain denial of request in writing and provide bona fide business reason
 - Identifiable cost (productivity; retraining/hiring; transfer)
 - Detrimental effect on ability to meet customer demand
 - Inability to organize work around other employees
 - Insufficiency of work to be performed during time employee proposes

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San Francisco Fair Chance Ordinance



- Prohibits employers from ever considering:
 - Arrest not leading to a conviction
 - Participation in or completion of diversion or deferral of judgment program
 - Conviction that has been judicially dismissed
 - A conviction from the juvenile justice system
 - A conviction that is more than seven (7) years old
 - Information pertaining to an offense other than a felony or misdemeanor (e.g., an infraction)

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San Francisco Fair Chance Ordinance



- Employers prohibited from considering other conviction history until after either
 - First live interview with person; or
 - After a conditional offer of employment
- If employer intends to take adverse action against an employee based on conviction history, employer must first notify employee and give employee opportunity to explain
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce
- Required statement of compliance in all advertisements/solicitations

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San Francisco Paid Parental Leave Ordinance



- Employers required to supplement employee's California Paid Family Leave (PFL) benefits
- Provides eligible employees working in San Francisco with 6 weeks fully paid leave to bond with new child (newborn, adoptive, or foster)
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce

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San Francisco PPLO: Covered Employer



- July 1, 2017: Employers with 35+ employees
- January 1, 2018: Employers with 20+ employees

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San Francisco PPLO: Covered Employer cont.



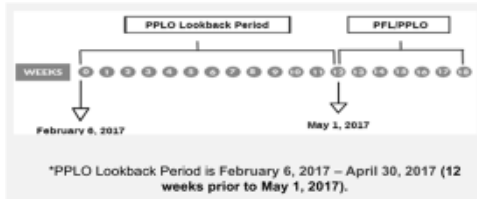
- Employer with fluctuating workforce: Average employees over PPLO Lookback Period
- 12 weekly, 6 semi-monthly or bi-weekly, or 3 monthly pay periods before the first day of the employee's leave
 - Used to determine whether employer is covered when # of employees fluctuates
 - Used to determine whether employee is covered when hours fluctuate
 - Used to calculate average normal weekly wage when wages fluctuate

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San Francisco PPLO: Covered Employer cont.



- PPLO Look Back Period for Non-Birth Parents:

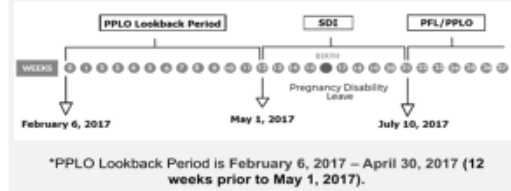


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San Francisco PPLO: Covered Employer cont.



- PPLO Look Back Period for Parents Transitioning from PDL:



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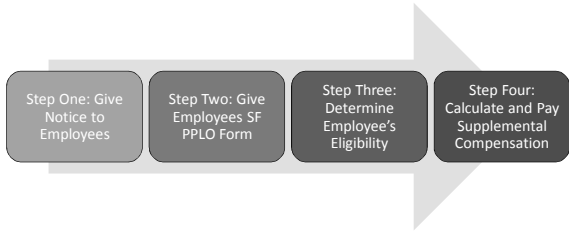
San Francisco PPLO: Covered Employee



- Works in San Francisco
- Commenced work for covered employer at least 180 days before leave period
- Works at least eight (8) hours/week in San Francisco for covered employer
- Work in San Francisco at least 40% of weekly hours for covered employer
- Apply for and receive California PFL benefits from EDD

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San Francisco PPLO: Four Steps for Employers

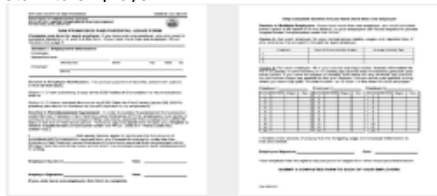


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San Francisco PPLO: SF PPLO Form



- Employer provides SF PPLO Form to employee to complete and return to employer




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**San Francisco PPLO:
Calculating Supplemental Compensation**

- Sum of EDD PFL benefit and Supplemental Compensation equals 100% of normal gross weekly wages
 - Capped at \$2,133 for 2017
 - Capped at \$2,027 for 2018
- Normal Gross Weekly Wages: Employee's salary during week prior to leave or, if weekly wages fluctuate, average wages over PPLO Lookback Period


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**San Francisco PPLO:
Calculating Supplemental Compensation cont.**

- EDD PFL Benefit: Amount paid to employee by EDD
 - 2017: 55% of normal weekly wages, up to cap of \$1,173
 - 2018: 60% of normal weekly wages, up to cap of \$1,216
 - 2018 Benefit increases from 60% to 70% depending on income
 - Found on EDD Notice of Computation

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**San Francisco PPLO:
Calculating Supplemental Compensation cont.**

- Employers may require employee to agree to use up to two (2) weeks of accrued unused vacation to cover supplemental compensation payments
- For PTO plans that do not distinguish between sick and vacation, employer may require the employee to agree to use up to 2 weeks of accrued PTO only in excess of 72 hours
- Tips and gratuities are not included in Supplemental Compensation

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**San Francisco PPLO:
Calculating Supplemental Compensation cont.**




Calculation Example
A – B = C

EDD Base Period Weekly Wage: \$1,000
PPLO Normal Weekly Wage: \$1,000

A. Normal Weekly Wage	\$1,000
B. EDD Weekly Benefit	<u>-\$550</u>
C. Weekly Supplemental Compensation:	\$450

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San Francisco PPLO: FAQs



- What if the employee does not qualify for FMLA/CFRA/other leave?
 - No retaliation under the Ordinance:
 - Although PPLO does not explicitly require employer to provide an employee with 6 weeks off to bond with a new child, it contains very robust anti-retaliation provisions, which prohibit retaliating against an employee for exercising any of his/her rights under the Ordinance.
 - Employer must still pay Supplemental Compensation:
 - If an employer terminates an employee during his/her leave period or within 90 days of notifying employer of intent to use PFL, employer must still pay Supplemental Compensation for employee's entire leave.

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**San Francisco Formula
Retail Employee Rights
Ordinances**



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San Francisco Formula Retail Employee Rights Ordinances



- Two Ordinances:
 - Hours and Retention Protections for Formula Retail Employees Ordinance
 - Fair Scheduling and Treatment of Formula Retail Employees Ordinance

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San Francisco Formula Retail Employee Rights Ordinances



- Covered Employers: Formula Retail Establishments (chain stores)
 - At least 40 formula retail establishments worldwide and
 - 20+ employees in San Francisco (including janitorial & contracting staff)
- Required poster in English, Spanish, Chinese, and any other language spoken by at least 5% of workforce

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Formula Retail Employee Rights Ordinances: Part-Time Work



- Covered employers must offer any extra work hours to current qualified part-time employees in writing before hiring new employees or using contractors or staffing agencies to perform additional work
- Equal treatment for part-time employees re:
 - Starting hourly wage
 - Access to employer-provided PTO and unpaid time off and
 - Eligibility for promotions

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Formula Retail Employee Rights Ordinances: Employee Retention



- If a covered Formula Retail Establishment is sold, the successor employer must retain, for 90 days, eligible employees who worked for the former employer for at least six months prior to the sale.
- Employer must post a notice of the "change in control" and provide employees with a notice about their rights.

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Formula Retail Employee Rights Ordinances: Scheduling



- Employers required to provide initial good faith written estimate of employee's expected minimum number of scheduled shifts per month and the days/hours of those shifts
- Employers must provide employees with schedules two (2) weeks in advance

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Formula Retail Employee Rights Ordinances: Scheduling Cont.



- Predictability in Pay for Schedule Changes:
 - If changes are made to an employee's schedule with less than seven (7) days' notice, the employer must pay the employee a premium of one (1) to four (4) hours of pay at the employee's regular hourly rate
- Pay for On-Call Shifts:
 - If an employee is required to be on-call, but is not called into work, employer must pay the employee a premium of 2 to 4 hours of pay

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Formula Retail Employee Rights Ordinances: Scheduling Cont.



- Exceptions to Predictability Pay
 - Operations cannot begin/continue due to threats to employees or property
 - Operations cannot begin/continue because of public utility failure
 - Operations cannot begin/continue because of Act of God (earthquake)
 - Another employee previously scheduled to work a shift is unable to work and did not provide seven (7) days' notice
 - Another employee failed to work or was sent home
 - Employer requires the employee to work overtime or
 - Employee trades shifts with another employee or requests a change in shifts

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Final Questions



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Thank You!

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