



San Francisco's New Flextime Ordinance

Insights

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Under the San Francisco Family Friendly Workplace Ordinance signed on October, 30, 2013 by Mayor Edward Lee, parents and caretakers have been afforded the right to request modified work schedules, such as a change in start times, part-time and part-year schedules, telecommuting and schedule predictability.

The ordinance, effective January 1, applies to employers with 20 or more employees in San Francisco. It formalizes the process by which an employee requests a schedule change, and lays out expectations with which the employer must comply. Specifically, employers must meet with the employee within 21 days of the request, provide a written response and, in the case of a denial, set out a bona fide business reason for the denial.

Bona fide business reasons include 1) the identifiable cost of the change in a term or condition of employment, including cost of productivity loss, retraining or hiring employee, or transferring employees from one facility to another; 2) the detrimental effect on the ability to meet customer or client demands; 3) the inability to organize work among other employees; and 4) insufficient work to be performed during the time the employee proposes to work. Employers must also inform workers of the new ordinance and post information about it in the workplace.

The City's Office of Labor Standards Enforcement is the agency that will hear complaints that requests for flexibility were improperly handled or complaints that employees were retaliated against for making requests for a modified work schedule.

Despite almost 100 pages of supporting documentation that was provided in conjunction with the ordinance, the law itself is general and lacks meaningful specificity. For instance, the ordinance is silent on the period of time that a change in a flexible work schedule may exist. Nor does it clearly lay out what constitutes an appropriate reason for an employer to revoke a flexible work arrangement.

The Family Friendly Workplace Ordinance is yet another San Francisco law of which employers have to be mindful. Our advice is that you keep track of why certain flexible-schedule requests are denied or approved to ensure that workers are treated fairly (and in order to avoid a claim that your flexible-arrangement process is biased). You should also consider whether to extend the flexible-schedule option to employees outside of San Francisco. There is no legal requirement that you do so, but

concerns about morale may arise if your San Francisco employees receive "better" treatment than employees working outside the City by the Bay.

Should you need any guidance on the Family Friendly Workplace Ordinance, please feel free to contact any attorney in Fisher Phillips' San Francisco office at (415) 490-9000.

This Legal Alert provides an overview of a specific city ordinance. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.