

San Francisco Adopts Fully Paid Parental Leave

On April 21, San Francisco became the first city in the nation to mandate fully paid parental leave for baby bonding. A new ordinance will require employers to supplement compensation new parents receive under California's Paid Family Leave program, starting in 2017. Employers will want to consider how best to integrate the new entitlement into their leave programs and payroll practices to ensure compliance.

Background

California provides paid family leave (PFL) benefits for a working parent to bond with a new child during the first year after the child's birth, adoption or foster care placement. To qualify for "baby bonding" benefits under the state-run PFL program, employees must be covered by State Disability Insurance (SDI) or a voluntary plan in lieu of SDI, and meet certain earnings criteria. Funded entirely through employee contributions, the PFL program provides partial wage replacement for up to six weeks of leave in any 12-month period.

PFL benefits are based on employee earnings, with employees reimbursed for 55% of their gross weekly wages up to an established cap. For claims beginning in 2016, the maximum PFL benefit is \$1,129 per week. For claims beginning in 2018, the benefit will be 60 or 70 percent of the employee's earnings (depending on the individual's wage level), up to the maximum weekly benefit amount.

Paid Parental Leave

On April 21, San Francisco Mayor Ed Lee signed the Paid Parental Leave [Ordinance](#) into law, making San Francisco the first city in the nation to require employers to fully compensate employees for baby bonding leave. San Francisco's ordinance covers employers with 20 or more employees regardless of location, provided at least one employee works in the city. The new benefit will be phased in as follows:



Employer Size	Date
50 or more employees	January 1, 2017
35 or more employees	July 1, 2017
20 or more employees	January 1, 2018

Covered Employees

Full-time, part-time and temporary employees who are eligible to receive PFL benefits to bond with a new child will also qualify for San Francisco's supplemental benefit if they satisfy the following criteria. The employee must have been employed by the covered employer for 180 days, and work at least eight hours per week and 40 percent of the workweek for that employer in San Francisco. Employees covered by a *bona fide* collective bargaining agreement (CBA) are not subject to the ordinance if its requirements are expressly waived or the CBA was entered into before the law's effective date.

Supplemental Compensation

Under the new law, covered employers will have to pay eligible employees "supplemental compensation" — the difference between the employee's gross weekly wage and state PFL benefits, up to a certain cap — to augment their income while on baby bonding leave. Based on the PFL's current wage replacement rate of up to 55 percent, employers would have to pick up the tab for the remaining 45 percent.

Comment. On April 11, California Governor Jerry Brown signed legislation ([AB 908](#)) that revises the formula for determining PFL benefits. When the PFL wage replacement rate increases to 60 percent or 70 percent (depending on the employee's earnings) in 2018, San Francisco employers would see a corresponding reduction in their supplemental compensation obligation.

Employers that pay PFL benefits through a state-approved voluntary disability insurance plan may comply with San Francisco requirements by paying supplemental compensation through the plan or directly to employees.

Benefits Coordination and Offsets

San Francisco's new supplemental wage replacement benefit is provided in coordination with state PFL benefits. Under the new city ordinance, an otherwise eligible employee who is receiving PFL benefits cannot receive supplemental compensation if the combined total of PFL benefits and the supplemental benefit would exceed the employee's normal gross weekly wage. Employers that already provide at least six consecutive weeks of fully paid parental leave in any 12-month period for baby bonding will not be required to provide supplemental compensation, regardless of whether it includes PFL benefits.

Otherwise payable supplemental compensation may be offset by requiring employees to apply up to two weeks of accrued but unused vacation as of the start of the leave period. If an employee does not agree to use vacation, the employer will not be required to provide supplemental compensation. An employee who voluntarily separates from employment within 90 days following leave may be required to fully reimburse the employer for any supplemental compensation received. If, however, the employer terminates an employee who is receiving PFL benefits for a

baby bonding leave, the employer's supplemental compensation obligation will continue through the remainder of the PFL benefits period.

Multiple Employers

In the event that an employee works for multiple employers, the supplemental compensation obligation will be apportioned among them based on the percentage of the employee's total gross weekly wages received from each. Any portion of the employee's wages that comes from an employer that is not a covered employer will be disregarded, and the covered employer will not be required to pay that portion.

Notice and Recordkeeping

Covered employers must post a notice to be provided by the Office of Labor Standards Enforcement ([OLSE](#)) at each workplace or job site to inform employees about their rights under the new San Francisco ordinance. The notice must be posted in English, Spanish, Chinese and any language spoken by at least 5 percent of employees who work at the location.

Employers will be required to keep records of supplemental compensation paid for three years. In the absence of such records, the employer will be presumed to have violated the ordinance.

Enforcement

Covered employers are prohibited from interfering with, restraining or denying an employee's attempt or exercise of any right under the new ordinance. Prohibited employer conduct includes threatening, discriminating or taking an adverse employment action against an employee for: requesting supplemental compensation; filing a complaint; cooperating in an OLSE investigation; or informing others of their paid parental leave rights. Reducing an employee's wages while on leave or within 90 days of requesting or applying for California PFL will create a rebuttable presumption of violation. Similarly, taking an adverse employment action against an employee within 90 days of the exercise of any right protected under the new law will create a rebuttable presumption of retaliation.

Complaints may be filed with OLSE, which will have authority to order temporary or interim relief pending a full investigation or hearing. The OLSE can order employers to pay withheld supplemental compensation, assess administrative penalties or file a civil action. Individuals and entities whose members are aggrieved may bring a private suit if the OLSE does not pursue a civil or administrative action or determines that no violation occurred. Available remedies include: reinstatement; back pay; supplemental compensation; liquidated damages; injunctive relief; reasonable attorneys' fees and costs; and interest.

In Closing

San Francisco's first-of-a-kind ordinance mandating fully paid parental leave takes effect on January 1, 2017 for employers with 50 or more employees and for all covered employers by 2018. Employers will want to consider how best to integrate the new entitlement into their leave programs and payroll practices to ensure compliance.

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