

April 11, 2022

On March 14, 2022, San Francisco Mayor London Breed approved a significant amendment to the city's Family Friendly Workplace Ordinance (FFWO). Currently, the FFWO grants covered employees the right to request a flexible or predictable working arrangement to assist with caring for:

- A child or children under the age of 18.
- A family member with a serious health condition.
- A parent age 65 or older.

Employers must meet with any employee who requests a flexible or predictable arrangement and respond to the request within 21 days of that meeting. An employer who denies a request must respond in writing with a bona fide business reason for the denial and provide the employee with notice of the right to request reconsideration.

With the new amendment, which is effective July 12, 2022, employers now will be **required** to grant a requested flexible or predictable working arrangement, absent undue hardship. The new amendment also will broaden the scope of covered employees under the FFWO.

## What is a flexible or predictable working arrangement?

Under the amendment, the definition of a flexible or predictable working arrangement will be amended to:

- A change in an employee's terms and conditions of employment as they relate to the number of hours an employee is required to work, which may include (but is not limited to) part-time work, part-year employment or job-sharing arrangements.
- An employee's work schedule, which may include modified hours, variable hours, predictable hours, or other schedule changes or flexibilities.
- An employee's work location, which may include (but is not limited) to telework.
- Modifying the employee's work assignments or duties.

## Who is a covered employee?

The amended FFWO will apply to all employees who:

- Work in San Francisco at least eight hours per week, including those who telework from a place of residence, an office or a worksite within San Francisco that is not maintained by their employer
- Have been employed by their employer for at least six months.
- Are caregivers for:
  - A child or children for whom the employee has assumed parental responsibility.
  - A family member with a serious health condition.
  - A family member age 65 or older.

## Who is a covered employer?

Any entity that employs at least 20 employees, regardless of whether the employees are located in San Francisco, is considered a covered employer. For the purposes of counting the total number of employees under the FFWO, employers must include workers who are staffed through a temporary staffing agency where the entity employs or exercises control over the wages, hours, or working conditions of those workers.

# What are an employer's obligations?

Under the amended FFWO, once an employer receives a request for a flexible or predictable working arrangement, the employer may choose to meet with the employee regarding the request within 14 days of receipt of the request. This is a departure from the FFWO's current requirement, which obligates employers to meet with employees within 21 days of any such request.

With the amendment, after this meeting, employers must respond to the request in writing within 21 days. If a flexible or predictable working arrangement is agreeable, employers may simply confirm their agreement in writing. If, however, the requested arrangement is denied, employers now must engage in an interactive process with employees to devise an alternative arrangement that satisfies both parties.

Employers may only deny a requested flexible or predictable working arrangement if it would cause undue hardship, the bases of which may include, but are not limited to:

- The identifiable costs directly caused by the requested arrangement, including the cost of productivity loss, retraining or hiring employees, or transferring employees between facilities.
- Detrimental effect on ability to meet customer or client demands.
- Inability to organize work among other employees.
- Insufficiency of work to be performed during the time or at the location the employee proposes to work.

If an employer denies a request for a flexible or predictable working arrangement, the reasons for the denial must be detailed in writing, along with a notice to the employee of the right to request reconsideration and to file a complaint with the San Francisco Office of Labor Standards Enforcement (OLSE).

If an employee requests reconsideration within 30 days of the notice of denial, the employer must meet with the employee within 21 days of the reconsideration request and inform the employee of the employer's final decision within 14 days of that meeting. This notice of final decision must be in writing and, if a denial, must explain the employer's basis for undue hardship and inform the employee of the right to file a complaint.

# What are the penalties for violations?

If OLSE determines that a violation took place, the agency may impose a penalty of \$50 per day that the violation occurred, per aggrieved employee, to be paid to the employee. Alternatively, OLSE may impose a penalty up to the cost of care incurred by the employee or person whose rights were violated.

OLSE also may impose a penalty of \$50 per day that the violation occurred, per aggrieved employee, or an amount up to the city of San Francisco's costs for the investigation and remedying of the violation, if greater, to be paid to the city.

Following a final administrative decision, if an employer fails to comply within the timeframe delineated within the decision, OLSE may seek compliance by referring the matter to the city attorney to seek enforcement in a court of law or equity. OLSE also may request, except where prohibited by state or federal law, that an employer's registration certificates, permits, or licenses held be revoked or suspended pending remediation of the violation.

Please contact the Cooley employment team if you have questions about the amendment to the FFWO.

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