



Astanehe Law

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# THE SAN FRANCISCO EMPLOYEE RIGHTS GUIDE

**ASTANEHE LAW KNOWS EMPLOYEE RIGHTS**

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# **SAN FRANCISCO'S MINIMUM WAGE**

## *Your Employer Must Pay You Minimum Wage!*

Passed in 2003, San Francisco became the first locality in the nation with a minimum wage ordinance. The current minimum wage is \$15.59 per hour. The City mandates an annual increase to the minimum wage based on the Consumer Price Index. Nearly every worker is covered by the minimum wage ordinance, except for a small number of government support employees, who are subject to a minimum wage rate of \$13.79 per hour.

### **Covered Employees**

The Minimum Wage ordinance covers nearly all employees who work at least two hours per week in San Francisco. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.3. It applies to full and part time employees. The Ordinance covers undocumented workers. The minimum wage ordinance does not cover employees who are the parent, spouse, or child of the employer.

### **Covered Employers**

The San Francisco minimum wage ordinance applies to any employer that employs someone for two or more hours per week within San Francisco. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.3. Covered employers include any person, association, organization, partnership, business trust, limited liability company, or corporation, as well as corporate officers and executives.

### **What are Wages Under the San Francisco Minimum Wage Ordinance?**

The San Francisco Minimum Wage ordinance defines wages as compensation in the form of salary, hourly pay, piece rate, commissions, and non-discretionary performance bonuses.

Where an employee receives base and commission pay during a period is mathematically less than San Francisco's required minimum wage amount, the employer must compensate for the difference.

The San Francisco minimum wage ordinance does not consider tips to be wages.

### **Employer Obligations Under the San Francisco Minimum Wage Ordinance**

San Francisco employers must pay employees at least minimum wage.

Employers must display minimum wage and employee rights posters at job sites. The notices must be in English, Spanish, Chinese, and any other language spoken by at least 5% of the employees at the job site.

At the time of hiring, Employers must provide each employee, in writing, the



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# **SAN FRANCISCO'S MINIMUM WAGE**

## *Your Employer Must Pay You Minimum Wage!*

employer's name, address, and telephone number.

### **Record Retention**

Employers must retain payroll records for at least four years. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.5(c).

### **Anti-Retaliation Provision**

The San Francisco Minimum Wage Ordinance includes an anti-retaliation provision. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.6. Under the provision, employers cannot retaliate against employees who assert their minimum wage ordinance rights, including receiving San Francisco's minimum wage. These rights include:

- The right to file a complaint;
- The right to inform any person about noncompliance with the Ordinance;
- The right to notify any person of their rights under this Ordinance; and,
- The right to assist any person in asserting their rights under this Ordinance.

Where an employer takes adverse action against an employee within 90 days of their exercising their rights protected under the Minimum Wage Ordinance, a rebuttable presumption of retaliation arises.

### **No Waiver of Minimum Wage**

Employers cannot force employees to waive their right to a minimum wage. However, employees subject to a collective bargaining agreement can waive minimum wage requirements so long as the CBA contains an explicit waiver that is clear and

unambiguous. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.8.

### **Enforcement**

Employees whose Minimum Wage ordinance rights have been violated may either report the violation to San Francisco's Office of Labor Standards Enforcement ("OLSE").

After an employee reports a violation, the OLSE is empowered to investigate the employer and conduct administrative hearings to resolve claims. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.7.

The employee can also elect to file a lawsuit in court against an employer. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.7(d).

### **Remedies**

An aggrieved employee is entitled to several remedies, including:

- Reinstatement;
- Back wages unlawfully withheld;
- \$50 per day penalty for each day the violation occurred or continues;
- Injunctive relief; and,
- Reasonable attorney fees and court costs. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.7(d).

Please note that the \$50 per day penalty is not available to City and County of San Francisco employees. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.7(g).

# SAN FRANCISCO'S MINIMUM WAGE

*Your Employer Must Pay You Minimum Wage!*

## Penalty Schedule

The OLSE is empowered to assess penalties against employers who violate the Minimum Wage Ordinance. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.16. The penalties are assessed as follows:

- \$50 to each employee or person whose rights were violated for each day the violation occurred. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.7(c).
- \$50 to City for each day and for each employee or person as to whom the violation occurred or continued. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.7(c).
- \$500 penalty for failure to maintain payroll records or to retain them for four years. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.16.
- \$500 penalty for failure to allow OLSE to inspect payroll records.
- \$1,000 per aggrieved employee penalty for retaliation for exercising rights under the Ordinance. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.16.
- \$500 penalty for failure to post notice of minimum wage, provide notice of investigation to employees, post notice of violation to the public, and provide employer's name, address, and number in writing. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.16.

## Astanehe Law Pro Tips

- San Francisco Minimum Wage is \$15.59 per hour.
- SF minimum covers nearly every San Francisco employee.
- Contact Astanehe Law for your consultation if your employer has underpaid you. You have a right to recover unpaid wages & penalties.

The law cumulatively increases all of the penalties by 50% for each subsequent violation of the same provision by the same employer or person three years. SAN FRANCISCO ADMINISTRATIVE CODE § 12R.16. The maximum penalty amount that OLSE may impose upon an employer in a calendar year is \$5,000, but \$10,000 where a retaliation citation has been issued. *Id.* OLSE can even assess enforcement costs against an employer, including attorney fees. *Id.* But, the costs cannot exceed \$5,000 per year. *Id.*

# **SAN FRANCISCO PAID SICK LEAVE ORDINANCE**

## *SF Employers Must Give All Employees Paid Time Off*

In 2006, San Francisco voters enacted the Paid Sick Leave Ordinance, which made San Francisco the first city in the nation with such a law. The San Francisco Paid Sick Leave Ordinance obligates employers to provide paid sick leave to all employers performing working in San Francisco. Under the Ordinance, employees earn one hour of paid sick leave for every thirty hours worked. Employers with ten or more employees may cap an employee's sick leave time balance at 72 hours, while employers with fewer than ten employees may institute a sick leave balance cap of 40 hours.

### **Covered Employees**

The Paid Sick Leave Ordinance covers anyone employed within San Francisco, including part-time and temporary workers. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.2. The Ordinance also includes employees living in San Francisco that work from home. OLSE Rule 6.1. These employees must work 56 or more hours of work within San Francisco each year to qualify for coverage. *Id.*

Traveling employees that work outside of San Francisco, but travel through the city, are covered for all hours spent working in the city, provided they stop within and do not simply pass through. OLSE Rule 6.2. A typical example consists of delivery drivers who pick up and drop off in San Francisco. As with employees working from home, these workers must perform 56 or more hours of work within San Francisco each year to qualify for coverage. *Id.*

### **Covered Employers**

The Paid Sick Leave Ordinance covers any employer that employs someone for two or more hours per week within San Francisco. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.2. Covered employers include people, associations, organizations, partnerships business trusts, limited liability companies, corporations, and corporate officers and executives. *Id.*

Hires made through agents or staffing agents are also included. *Id.*

### **Paid Sick Leave Defined**

Paid sick leave is characterized exactly as in California Labor Code § 233(b)(4), which means that an employee may use paid sick leave when ill or injured or receiving medical care, treatment, or diagnosis. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4. Paid sick leave also includes time off spent providing care or assistance to other persons with illness, injury, medical condition, need for diagnosis, preventative care, care, treatment, or any other medical reason. *Id.*

Employees are permitted to use their paid sick leave to care for their children, parents, legal guardians or wards, siblings, grandparents, grandchildren, spouses,



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# **SAN FRANCISCO PAID SICK LEAVE ORDINANCE**

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registered domestic partners, or a designated person of the employee's selection. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4.

Paid sick leave also includes time taken to manage domestic violence, sexual assault, or stalking suffered by an employee. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4.

An employee can use their paid sick leave to donate an organ or bone marrow. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4.

Under the Paid Sick Leave Ordinance, an employer cannot require an employee exercising paid sick leave rights to locate a replacement for coverage during the employee's absence. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4.

## **Employer Verification for Paid Sick Leave Use**

An employer may only take "reasonable measures" in verifying an employee's use of paid sick leave. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4(h). An employer cannot require an employee to disclose more information than is necessary for the employer to determine whether the employee's absence is proper. OLSE Rule 2.1.

For example, after an employee requests one week of paid sick leave, the employer asks for documentation. The employee provides a note from her general doctor, which states, "The employee will be unavailable for work for one week due to a medical operation." The note is legally

sufficient, and the employer may not request additional detail, such as to the type or purpose of the operation.

Under the San Francisco Paid Sick Leave Ordinance, employers cannot require employees to provide medical notes or documentation for paid sick leave use of three or fewer consecutive work days. OLSE Rule 2.3. However, employers can request such items where a demonstrable pattern or clear instance of abuse exists. OLSE Rule 2.4. Additionally, employers can request a medical note or documentation where the employee is utilizing paid sick leave for an appointment. OLSE Rule 2.5.

## **Employer Reasonable Notice Requirement**

Employers may require reasonable notice of paid sick leave absences. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4(g). Generally, requiring at least two hours' notice before the start of a shift is reasonable. OLSE Rule 1.3.

## **Paid Sick Leave Accrual**

Under San Francisco's Paid Sick Leave Ordinance, employees earn one hour of paid sick leave for every 30 hours worked. Employees become entitled to utilize their paid sick leave time beginning on the 90<sup>th</sup> day of employment, and immediately as it becomes available afterward. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.4(d).



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# **SAN FRANCISCO PAID SICK LEAVE ORDINANCE**

## *SF Employers Must Give All Employees Paid Time Off*

Employers with ten or more employees may cap an employee's sick leave time balance at 72 hours, while employers with fewer than ten employees may institute a sick leave balance cap of 40 hours.

Paid sick leave time balances carry over year-to-year. However, employers cannot cash out unused paid sick leave time. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.3(g).

Employers are permitted to make a lump sum payment of sick leave available at the beginning of the calendar year. This is called an upfront allocation.

Where an employee leaves and comes back within one year, the previously accrued and saved paid sick leave shall be re-instantiated. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.3(g).

### **Waiver**

Employers may not force waiver of the right to paid sick leave. However, employees covered by a collective bargaining agreement may waive their rights under the Ordinance. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.9.

### **Employers Required to Inform Employees About Paid Sick Leave Rights**

Employers must post an official OLSE paid sick leave notice at job sites. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.5. The notices must be in English, Spanish, Chinese, and any other language spoken by at least 5% of the employees at the job site. *Id.*

### **Record Retention**

Employers must retain records documenting the hours worked by employees and paid sick leave taken by employees for four years. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.6.

### **Anti-Retaliation**

The San Francisco Paid Sick Leave Ordinance includes an anti-retaliation provision. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.7. Under the provision, employers cannot fire, threaten to fire, demote, suspend, discriminate, or take adverse action in retaliation for exercising protected rights, including the right to:

- Use paid sick leave;
- File a complaint;
- Inform any person about the employer's violation;
- Cooperate with OLSE in the investigation of violations; and,
- Inform any person of their rights. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.7.

The provision contains a 90-day rebuttable presumption of retaliation for any employer adverse action against an employee. *Id.*

### **Enforcement**

The OLSE is authorized to investigate violations, hold hearings, and order



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# **SAN FRANCISCO PAID SICK LEAVE ORDINANCE**

*SF Employers Must Give All Employees Paid Time Off*

appropriate relief. SAN FRANCISCO  
ADMINISTRATIVE CODE § 12W.8.

The Paid Sick Leave Ordinance includes a private right of action. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.8(c). Aggrieved employees may file a lawsuit in court against an employer. *Id.*

## Remedies

An employee whose Paid Sick Leave Ordinance rights are violated may be entitled to:

- Reinstatement;
- Back pay;
- Payment of any sick leave unlawfully withheld;
- \$50 per day penalty for each day the violation occurred or continues;
- The greater of either treble damages of unlawfully withheld sick leave or \$250; and,
- Attorney fees and court costs. SAN FRANCISCO ADMINISTRATIVE CODE § 12W.8(c).



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# SAN FRANCISCO PAID FAMILY LEAVE

*SF Employees are Entitled to 100% Compensation for Family Leave*

Although California provides employees partial paid leave for family caregiving or bonding with a newborn, it does not fully supplement an employee's salary.

CALIFORNIA UNEMPLOYMENT CODE § 3300 *et seq.* California employees are entitled to only six weeks of partial paid leave per year at 55% of their weekly wage. *Id.* The maximum weekly benefit is capped at \$1,129 per week. *Id.* Considering the Bay Area's exorbitant cost of living, many San Franciscans, are unable to exercise their right to family leave due to the inadequate partial pay benefit. Given these ascetic circumstances, San Francisco became the first jurisdiction in the Nation to provide fully paid parental leave through the passage of the San Francisco Paid Family Leave Ordinance in 2016. The Ordinance supplements the California Paid Family Leave Act by providing additional compensation to an employee so that they reach 100% of their weekly wage during the paid family leave. SAN FRANCISCO POLICE CODE § 3300H.4(b)(1)(A).

The San Francisco Paid Family Leave Ordinance applies to any employee who:

1. Worked for the employer for at least 180 days before the start of their leave;
2. Performed at least 8 hours of work per week within San Francisco;
3. Worked at least 40% of their total weekly hours in San Francisco; and,
4. Are eligible to receive California Paid Family Leave benefits.

The Ordinance applies to employers that employ 20 or more employees, including temporary workers.

The California Paid Family Leave cap of \$1,129 per week still applies. This means that an employee receiving a weekly benefit under the San Francisco Paid Family Leave Ordinance will not receive more than \$1,129 per week. SAN FRANCISCO POLICE CODE § 3300H.4(b)(2).

Employers must continue paying employees a supplemental weekly benefit if the employer terminates the employee during the leave period. SAN FRANCISCO POLICE CODE § 3300H.4(b)(3).

Employers can apply up to two weeks of an employee's unused accrued vacation leave to meet their San Francisco Paid Family Leave Ordinance obligation. SAN FRANCISCO POLICE CODE § 3300H.4(b)(5).

Should an employee quit their job within 90 days of returning to work following paid family leave, the employee must reimburse the employer for their supplemental payments, but only if the employer requests reimbursement in writing. SAN FRANCISCO POLICE CODE § 3300H.4(e).

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## Astanehe Law Pro Tips

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- When taking leave to care for a newborn, apply for paid family leave from California & San Francisco to receive 100% of your weekly wage.

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- Your paid family leave benefit is capped at \$1,129 per week.

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- Following your leave, stay with your employer for 90 calendar days or else you risk supplemental payment reimbursement exposure.

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- Contact Astanehe Law if your employer retaliates against you for asserting your right to paid family leave.



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# SAN FRANCISCO PAID FAMILY LEAVE

*SF Employees are Entitled to 100% Compensation for Family Leave*

The San Francisco Paid Family Leave Ordinance contains an anti-retaliation provision, which means that an employer cannot discharge, demote, suspend, discriminate against, or take adverse action against any person in retaliation for exercising their rights under the San Francisco Paid Family Leave Ordinance. SAN FRANCISCO POLICE CODE § 3300H.7(b). Employee rights include:

- The right to collect the San Francisco Paid Family Leave weekly benefit amount;
- The right to file a lawsuit in court for violations of the San Francisco Paid Family Leave Ordinance;
- The right to file a complaint of suspected San Francisco Paid Family Leave Ordinance violation with the San Francisco Office of Labor Standards Enforcement ("OLSE");
- The right to inform any person about the employer's infringement;
- The right to cooperate with the San Francisco OLSE in investigations of alleged violations; and,

- The right to inform any person of their rights under the San Francisco Paid Family Leave Ordinance. *Id.*

The San Francisco Paid Family Leave Ordinance contains a private right of action. SAN FRANCISCO POLICE CODE § 3300H.8(c)(1). Before filing suit, however, an employee must inform the San Francisco OLSE and the San Francisco City Attorney of their employer's violation. SAN FRANCISCO POLICE CODE § 3300H.8(2). The City has 90-days to bring an action, determine no violation occurred, or let the employee pursue their private right of action.

Damages for violations of the Ordinance include reinstatement, back pay, payment of supplemental compensation unlawfully withheld, payment of additional sums as liquidated damages at \$50 per day of violation, and injunctive relief. SAN FRANCISCO POLICE CODE § 3300H.8(c)(3). The San Francisco Paid Family Leave Ordinance also contains an attorney fee provision. *Id.*



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# **SAN FRANCISCO FAMILY FRIENDLY WORKPLACES**

## *Employees Are Entitled to Family Flexible Work Schedules*

The San Francisco Family Friendly Workplace Ordinance gives employees the right to request flexible or predictable work arrangements to assist with caregiving responsibilities. Under the Ordinance, an employee may request a flexible or predictable work arrangement while they are assisting with care for: (1) A child under 18; (2) A family member with a serious health condition; or, (3) A parent that is 65 or older. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.4.

### Covered Employees

Employees are covered by the Family Friendly Workplace Ordinance if:

1. They are employed in San Francisco;
2. For six or more months at any time; and,
3. Regularly work at least eight hours per week.

### Covered Employers

Employers with twenty or more employees, including outside of San Francisco, are subject to the Ordinance.

### Family Relationship

The Family Friendly Workplace Ordinance defines a family relationship as a relationship by blood, legal custody, marriage or domestic partnership, including spouse, domestic partner, child, parent, sibling, grandchild, or grandparent. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.3.

### Procedure for Making Requests

To facilitate an orderly and fair process for requesting time off, the Family Friendly Workplace Ordinance obligates employers and employees to a procedure for making requests.

Employees' must make requests in writing. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.5. The request must be for a flexible or predictable work arrangement, explain how it is related to caregiving, and specify the effective date and duration of the desired change. *Id.* Should the employee make a verbal request, the employer is obligated to request the employee put the request in writing. *Id.*

Following the initial request, the employer has 21 days to hold a meeting with an employee regarding the request. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.6. The employer then has 21 days following the meeting to respond. *Id.* If the employer denies the employee's request, it must do so in writing and offer a business reason for the denial. *Id.* Additionally, the employer must provide notice of the employee's right to request reconsideration and include a copy of the applicable provision. *Id.*



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# **SAN FRANCISCO FAMILY FRIENDLY WORKPLACES**

## *Employees Are Entitled to Family Flexible Work Schedules*

The employee then has 30 calendar days to request reconsideration in writing. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.6. The employer must meet with the employee regarding reconsideration within 21 days. *Id.*

If the employer grants the employee's request, it must do so in writing. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.6.

### Types of Flexible or Predictable Working Arrangements

The Family Friendly Workplace Ordinance permits employees to request changes in the terms and conditions of their employment to provide flexibility while assisting with familial caregiving responsibilities. Requested changes may include:

- The number of hours the employee works;
- The times when the employee is required to work;
- The location the employee is required to work;
- Work assignments or other factors; or,
- Predictability in work schedule. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.4.

### Employer Verification

An employer can request employee verification of caregiving responsibilities. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.4(c). However, the request for verification must be reasonable and should not be undertaken to deter the employee from making the request. *Id.*

An employer may request written confirmation from a doctor where the employee's request relates to a family member with a serious health condition. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.3. The Ordinance defines a serious health condition as an "illness, injury, impairment, or physical or mental condition that involves," inpatient care, or continuing treatment from a healthcare provider. *Id.*

Where an employee requests relates to providing care to a child or parent, the employer is permitted to require verification of caregiver status, such as proof of the family member's age. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.3. Verification requests that violate the right to privacy may give rise to civil liability.

### Employer Justifications for Request Denial

An employer is allowed to deny an employee's request under the Ordinance for a business reasoning, including:

- An identified cost to honor the requested change;
- Detrimental effects on serving client or customer needs;
- Inability to organize work among other employees;
- Insufficiency of work to be performed during the alternative time employee proposes to work.  
SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.5.



# **SAN FRANCISCO FAMILY FRIENDLY WORKPLACES**

## *Employees Are Entitled to Family Flexible Work Schedules*

### Employer or Employee May Revoke Flexible or Predictable Working Schedule

Both employers and employees are free to revoke a previously agreed upon working arrangement by providing 14-days written notice. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.5.

### Limitations on Employee's Request Rights

Under the San Francisco Family Friendly Workplace Ordinance, employees are limited to only two requests in any twelve-month period. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.4. However, an employee is free to make an additional request where an employer revoked an agreed upon working arrangement. *Id.* Further, an employee who experiences a major life event can make an additional request. *Id.*

The Ordinance defines a major life event as:

- The birth or adoption of a child; and,
- An increase in caregiving duties for a family member with a serious health condition. San Francisco Administrative Code § 12Z.3.

A request for reconsideration of an employer's denial does not apply to the two-month limitation. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.3.

### Employers Required to Inform Employees About Paid Sick Leave Rights

Under the San Francisco Family Friendly Workplace Ordinance, employers must post an official notice of employee's rights under the Ordinance at the job site. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.8. The notices must be in English, Spanish, Chinese, and any other language spoken by at least 5% of the employees at the job site. *Id.*

### Record Retention

Employers must retain records establishing compliance with the Family Friendly Workplace Ordinance for at least three years from the date of each employee request. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.9.

### Waiver

Employers may not force waiver of the right to request flexible or predictable work arrangements to assist with caregiving responsibilities. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.12. However, employees covered by a collective bargaining agreement may waive their rights under the Ordinance. *Id.*

### Anti-Retaliation

The San Francisco Family Friendly Workplace Ordinance contains an anti-retaliation provision. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.7.



# **SAN FRANCISCO FAMILY FRIENDLY WORKPLACES**

## *Employees Are Entitled to Family Flexible Work Schedules*

Under the anti-retaliation provision, employers cannot fire, threaten to fire, demote, suspend, discriminate, or take adverse action in retaliation for exercising protected rights, including the right to:

- Requesting a flexible or predictable work schedule;
- Requesting reconsideration of a denial;
- Filing a complaint with OLSE;
- Filing a lawsuit in court;
- Informing any person of the employer's violation of the Ordinance; and,
- Cooperating with a lawsuit or OLSE investigation of the Ordinance. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.7.

### Enforcement

OLSE is authorized to investigate violations and hold hearings. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.10. The Ordinance does not contain a private right of action. Yet, the City Attorney may initiate a civil action against the employer for violations of the Ordinance. *Id.*

### Remedies

Employees are entitled to damages of \$50 for each day a violation occurred or continued. SAN FRANCISCO ADMINISTRATIVE CODE § 12Z.10.

### **Astanehe Law Pro Tips**

- San Francisco Employees have the right to request accommodations to their work schedule to provide care to a child under 18, a family member with a serious illness, or a parent that is 65 years of age or older.
- The ordinance proscribes the procedure for making requests.
- If the employer cannot honor the initial request, they must meet with the employee to discuss a modified solution.
- Requests typically include modification of number of hours worked per week, the times the employee is scheduled for work, the worksite, the types of assignments given to the employee, and a request for schedule predictability.
- Contact Astanehe Law if your employer has violated your right to a family friendly work environment.



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# **HEIGHT & WEIGHT EMPLOYMENT DISCRIMINATION**

## *San Francisco Employers Cannot Discriminate Due to Height & Weight*

San Francisco's general anti-discrimination law is codified at San Francisco Police Code Article 33. Article 33 prohibits discrimination based on the typical protected characteristics also covered federally by Title VII and at the state level by FEHA, but also uniquely bars discrimination based on height and weight.

The law applies to businesses employing six or more people, including owners and management. SAN FRANCISCO POLICE CODE § 3033(c)(1). The law protects employees and applicants.

After an employee successfully proves discrimination, the employer can refute the charge by arguing a justifiable reason for the discrimination existed or that it acted according to an existing seniority system or employee benefits system. SAN FRANCISCO POLICE CODE §§ 3033(b), (c)(2).

Additionally, the San Francisco Police Code includes an anti-retaliation provision. SAN FRANCISCO POLICE CODE § 3305.2(b). The provision protects employees who:

1. Oppose anything Article 33 makes unlawful;
2. Support Article 33 or its enforcement;
3. File a complaint under Article 33 with San Francisco Human Rights Commission or in a court of law; or,
4. Testify, assist, or participate in any Article 33 investigation, proceeding, or litigation.

The law contains a private right of action, enabling an aggrieved employee to file a lawsuit in court. An employer that violates Article 33 may be liable for general damages, special damages, treble damages, and punitive damages of up to \$400 per violation. SAN FRANCISCO POLICE CODE § 3306. Additionally, the law contains an attorney fee and court cost provision, which means, upon losing at trial, the employer must pay for the employee's attorney bill. *Id.*

Alternatively, an aggrieved employee may file a complaint with the San Francisco Human Rights Commission ("HRC"). SAN FRANCISCO POLICE CODE §§ 3307(a), (b). The HRC must investigate the matter within ten days and may either conduct mediation or refer the matter to the San Francisco City Attorney office for prosecution. *Id.*

An aggrieved employee has one year from the date of the violation to file in court or at the HRC.

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### **Astanehe Law Pro Tips**

- Height and weight are protected classes for San Francisco applicants and employees.
- Contact Astanehe Law if an employer has discriminated against you based on your height or weight.



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# **PROHIBITION AGAINST AIDS DISCRIMINATION**

## *SF Employers Cannot Discriminate Against People with Diseases*

The San Francisco Board of Supervisors seeks to eliminate discrimination based on a person having AIDS or other diseases that are not easily transmitted. Employers are prohibited against discriminating against persons with AIDS or any "disease that cannot be transmitted by casual contact." SAN FRANCISCO POLICE CODE §§ 3803, 3852. This means that it is unlawful for San Francisco employers to engage in discriminatory conduct like rejecting a candidate who has AIDS or terminate someone who contracts AIDS during the employment. However, employers can discriminate against someone with AIDS or another disease where it is necessary because of the particular job and no other means of accommodating the employee exists. SAN FRANCISCO POLICE CODE § 3803(b). Additionally, San Francisco employers can discriminate based on having AIDS or another disease where the employee or applicant will endanger the health and safety of themselves and others. SAN FRANCISCO POLICE CODE § 3803(b)(3).

Under no circumstance can a San Francisco employer force an employee or applicant to undergo AIDS testing. SAN FRANCISCO POLICE CODE §§ 3809, 3854.

The law contains an anti-retaliation provision that prohibits employers from discriminating against a worker for associating with people who have AIDS or other diseases. SAN FRANCISCO POLICE CODE § 3808. Additionally, the provision protects employees who assert their Article 38 rights, file an Article 38 complaint, cooperate with any Article 38 investigation

or litigation, or support Article 38 enforcement. *Id.*

The law contains a private right of action, which allows aggrieved employees to bring a lawsuit against their employer. SAN FRANCISCO POLICE CODE § 3811(b). Successful employees can recover actual damages, which are subject to tripling, and punitive damages. SAN FRANCISCO POLICE CODE §§ 3810, 3855. The law contains an attorney fee provision. *Id.*

Alternatively, an aggrieved employee can file a complaint with the HRC. SAN FRANCISCO POLICE CODE §§ 3811, 3856. The HRC is empowered to investigate, mediate, and refer the matter to the San Francisco Attorney General. *Id.*

An aggrieved employee has two years from the date of the violation to file in court or at the HRC.

If your employer or potential employer has discriminated you for having AIDS or another type of disease, please contact Astanehe Law for your free consultation. Do not let your employer perpetrate this outdated form of discrimination founded on 80s era racism, homophobia, hatred, and ignorance.



# **SAN FRANCISCO FAIR CHANCE ORDINANCE**

## *Rights for Employees Previously Involved in the Justice System*

The San Francisco Fair Chance Ordinance obligates employers to follow strict rules regarding the use and consideration of applicant and employee arrest and conviction records. Under the Fair Chance Ordinance, employers are required to:

- Not ask about an applicant's arrest or conviction record until after offering employment;
- Include in all job postings that qualified applicants with arrest and conviction records will be considered for the position;
- Post an official Fair Chance Ordinance Notice at every job site; and,
- Before making an employment decision based on an individual's conviction or unresolved arrest, give the individual an opportunity to present evidence of inaccurate information, rehabilitation or other defensive factors. SAN FRANCISCO POLICE CODE, Article 49.

### Covered Employees

The Fair Chance Ordinance applies to all positions where an employee works at least eight hours per week in San Francisco, including temporary, seasonal, part-time, contract, contingent, and commission-based work. SAN FRANCISCO POLICE CODE § 4903. Also, the Ordinance covers work through an employment agency, and vocation or educational training regardless of pay.

### Covered Employers

Employers with five or more employees worldwide must comply with the Fair Chance Ordinance. SAN FRANCISCO POLICE CODE § 4903. Additionally, all San Francisco

contractors, subcontractors, and leaseholders of City property must comply with the Ordinance. SAN FRANCISCO ADMINISTRATIVE CODE § 12T.

### Prohibition on Inquiries into Criminal Record

The Fair Chance Ordinance prohibits covered employers from asking about an arrest or conviction record until after offering employment. Employment applications cannot inquire or require applicants to disclose any facts or details of their conviction history, unresolved arrests, or any other criminal justice system components. SAN FRANCISCO POLICE CODE § 4904.

But, an employer can ask for written consent to a background check on an application if the employer includes language that a third party will conduct the background check and it will only obtain the information after offering employment. SAN FRANCISCO POLICE CODE § 4904



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# **SAN FRANCISCO FAIR CHANCE ORDINANCE**

*Rights for Employees Previously Involved in the Justice System*

## Procedure for the use of Criminal History Information in Employment Decision

San Francisco employers cannot request or consider information related to:

- An arrest not leading to a conviction, except for unresolved arrests;
- Participation in a diversion or deferral of judgment program;
- A dismissed, expunged, otherwise invalidated, or inoperative conviction;
- A conviction in the juvenile justice system;
- An offense other than a felony or misdemeanor, such as an infraction;
- A conviction that is more than seven years old, except where the prospective position supervises minors, dependent adults, or persons over 65 years old; or,
- A conviction for decriminalized conduct, including the non-commercial use and cultivation of cannabis. SAN FRANCISCO POLICE CODE § 4904.

When making an employment decision based on an applicant or employee's conviction history, the employer must perform an individualized assessment considering only convictions directly related to the employment position, the time elapsed since the conviction, and evidence of inaccuracy, rehabilitation, or other mitigating factors. SAN FRANCISCO POLICE CODE § 4904(f). Essentially, the employer must treat each applicant as an individual and not automatically reject someone due to their criminal history.

If the employer intends to reject the applicant after performing the individualized assessment, the employer must first provide the individual notification of the impending adverse action and the basis for it. SAN FRANCISCO POLICE CODE §

4904(g). The employer is also required to provide the individual with a copy of the background check it received during the individualized assessment. *Id.*

The employee has seven days to give verbal or written notice of inaccuracy, rehabilitation evidence, or present other mitigating factors. San Francisco Police Code § 4904(h). If the employee produces the information above, the employer may not take any adverse action for a reasonable period, and the employer must reconsider its decision in light of the new information. *Id.*

Following the reconsideration period, the employer must notify the employee of its change in position or final adverse action. SAN FRANCISCO POLICE CODE § 4904(i).

## State and Federal Preemption

There are some state and federal laws preempt the San Francisco Fair Chance Ordinance, and require background checks for certain positions. For example, applicants for jobs in the financial services and insurance industries must submit to a background check before being considered for a position.

## Record Retention

Employers must retain records of employment, applicant forms, and other pertinent data and records for three years. SAN FRANCISCO POLICE CODE § 4910.



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# **SAN FRANCISCO FAIR CHANCE ORDINANCE**

*Rights for Employees Previously Involved in the Justice System*

## Anti-Retaliation

The San Francisco Fair Chance Ordinance contains an anti-retaliation provision. SAN FRANCISCO POLICE CODE § 4908. Employers cannot interfere with, restrain, or deny the exercise of any right protected under the Ordinance. Further, it is unlawful for an employer to refuse to hire an applicant, discharge, threaten to discharge, demote, suspend, or take an adverse action against an employee in retaliation for exercising their Fair Chance Ordinance rights. These rights include:

- The right to file a complaint or inform any person about any employer's alleged violation of this Article;
- The right to notify any person of an employer's suspected violation of the Ordinance;
- The right to cooperate with the OLSE or other persons in the investigation or prosecution of any alleged violation of the Ordinance;
- the right to oppose any policy, practice, or act that is unlawful under the Ordinance; or,
- The right to inform any person of his or her rights under the Ordinance.

The Fair Chance Ordinance defines an adverse action as to failing or refusing to hire, discharge, or not promote an individual, or to limit, segregate, or classify employees in a manner depriving anyone of employment opportunities. SAN FRANCISCO POLICE CODE § 4903. Under the Ordinance, taking adverse action against a person within 90 days of the exercise of a Fair Chance right creates a rebuttable presumption that the employer's action was taken in retaliation. */d.*

## Enforcement

The OLSE is authorized to investigate violations and hold hearings. The Department can order relief, including

penalties, which employers must pay to the City. SAN FRANCISCO POLICE CODE § 4909.

The San Francisco Fair Chance Ordinance contains a private right of action allowing any applicant or employee whose rights were violated to a civil action in court. SAN FRANCISCO POLICE CODE § 4909(b). However, to initiate a civil action, an employee or applicant must first:

1. File a complaint with OLSE;
2. Wait 90 days after filing the complaint;
3. Provide a 30-day written notice to the OLSE and the City Attorney's Office of their intent to initiate a lawsuit; and,
4. Wait 30 days for the City Attorney not to provide notice of intention to start a civil proceeding.

## Remedies

An employee or applicant who prevails in a civil action is entitled to recover:

- Reinstatement;
- Back pay;
- Payment of benefits or pay unlawfully withheld;
- \$500 per day to each employee or applicant for each day their Fair Chance rights were violated;
- Injunctive relief; and,
- Reasonable attorney fees and costs. SAN FRANCISCO POLICE CODE § 4909(b).

Employees and applicants have one year from the date of the violation to file a civil action. SAN FRANCISCO POLICE CODE § 4909(e).



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# **PAY PARITY FOR SAN FRANCISCO EMPLOYEES**

## *Reducing the Gender Wage Gap in San Francisco*

The gender wage gap persists in harming women in the workforce. Since wages are often based on employees' prior salaries and wage rates, the gender wage gap perpetuates gender wage inequity. To combat gender-based wage disparities in employment, the San Francisco Board of Supervisors passed the Parity in Pay Ordinance which prevents prior earnings from weighing down a woman's salary throughout her career.

The Ordinance prevents employers from inquiring, relying on, or considering an applicant's salary history when considering hiring an applicant or setting their starting salary. SAN FRANCISCO POLICE CODE § 3300J.4(a). Additionally, employers cannot refuse to hire an applicant because they refused to disclose salary history. SAN FRANCISCO POLICE CODE § 3300J.4(d). Further, employers cannot release current or former employee salary history to prospective employers. SAN FRANCISCO POLICE CODE § 3300J.4(d).

Of course, employees remain free to voluntarily disclose their salary history. SAN FRANCISCO POLICE CODE § 3300J.4(e).

The Parity in Pay Ordinance does not contain a private right of action. Instead, aggrieved applicants or employees may file a complaint with the San Francisco OLSE. SAN FRANCISCO POLICE CODE § 3300J.6.



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# **SAN FRANCISCO WORKER RETENTION ORDINANCES**

*Certain San Francisco Workers Can't be Fired During Business Transfer!*

The City & County of San Francisco has some of the most progressive laws regarding worker retention in the nation. The City prioritizes community and seeks to keep networks of employees intact through a series of worker retention ordinances that prevent the firing of certain classes of workers before, during, and shortly after a business is transferred, sold, or merged. SAN FRANCISCO POLICE CODE §§ 3300C, 3300D, & 3300E ("Retention Ordinances"). Workers covered by the Retention Ordinances include security, janitorial, building maintenance, grocery, and hospitality industry workers. *Id.* If you work in one of these industries, and your employer is changing or has recently changed, then one of the Retention Ordinances likely protects you.

Although each of the Retention Ordinances possess slight distinctions, the ordinances generally require:

- Existing owners to post a notice of change in control that informs employees that a new owner will soon take control of the company or their worksite. SAN FRANCISCO POLICE CODE §§ 3300E.5, 3300D.5.
- New owners to retain most employees during a 90-day transition period. SAN FRANCISCO POLICE CODE §§ 3300C.2, 3300E.3, & 3300D.4.
- New owners can only terminate workers (1) for cause; or, (ii) Upon determining that fewer employers are necessary at the worksite or to perform the contract. SAN FRANCISCO POLICE CODE §§ 3300C.2, 3300E.4, & 3300D.4.

The Grocery Worker Retention Act requires new employers to prepare a performance evaluation for each worker upon the completion of the 90-day transition period. SAN FRANCISCO POLICE CODE § 3300D.4.(d).

All of the Retention Ordinances contain private right of actions, which enable aggrieved employees to sue their current or former employers for violations of the Retention Ordinances, including for wrongful termination. SAN FRANCISCO POLICE CODE §§ 3300C.3, 3300E.6, & 3300D.6. Damages include back pay awards for each day of violation, reinstatement, front pay, the full value of benefits, injunctive relief, and attorney fees and court costs. *Id.* Further, hospitality industry workers are entitled to an additional award of \$50 per day of violation.

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## **Astanehe Law Pro Tips**

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- Certain employees cannot be fired during or shortly after a business is transferred, merged, or sold.
- The law protects security, janitorial, building maintenance, grocery, and hospitality industry workers.
- An employee can always be terminated for cause.
- Contact Astanehe Law if you believe that your employer, or prospective employer has violated this law.



# RIGHT TO PRIVACY IN THE WORKPLACE & OFF-DUTY

## *San Francisco Employees Have Privacy Rights!*

All San Franciscans enjoy the full benefit of the right to privacy in the workplace. In light of this right, San Francisco seeks to protect its employees from unreasonable inquiry and investigation of off-the-job conduct, associations, and activities not directly related to actual job performance. SAN FRANCISCO POLICE CODE § 3300A.1.

San Francisco employers cannot adopt, make, or enforce policies forbidding or preventing employees from engaging or participating in personal relationships, organizations, activities, or associations. SAN FRANCISCO POLICE CODE § 3300A.3.

Further, employers cannot demand, require, or request employees submit to any blood, urine, or encephalographic test as a condition of continued employment. SAN FRANCISCO POLICE CODE § 3300A.5.

The Ordinance applies to anyone working in San Francisco, except police, Sheriff, firefighters, police dispatchers; and, any person operating emergency service vehicles for the City. SAN FRANCISCO POLICE CODE § 33033A.2(1).

The Ordinance includes a private right of action. SAN FRANCISCO POLICE CODE § 3300A.8. Attorney fees are recoverable. *Id.*

### Astanehe Law Pro Tips

- Your employer cannot unreasonably inquire into off-duty conduct not related to your job performance.
- Your employer cannot prohibit you from engaging or participating in personal relationships, organizations, groups, or associations.
- An exemption exists for law enforcement personnel.
- Contact Astanehe Law has intruded into your personal affairs for your consultation.



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# LACTATION IN THE WORKPLACE

## *San Francisco Employees Have Lactation Rights!*

In 2017, the San Francisco Board of Supervisors passed the Lactation in the Workplace Act. SAN FRANCISCO POLICE CODE ARTICLE 33I. The Board of Supervisors intended to provide a supportive environment to enable working mothers to breastfeed or express milk during working hours. SAN FRANCISCO POLICE CODE § 3300I.2(m).

Now, San Francisco employers must provide lactation accommodations, including:

- Break time to accommodate an employee to express breast milk for their child. SAN FRANCISCO POLICE CODE § 3300I.4(a);
- Provide a suitable, private, and nearby lactation location. SAN FRANCISCO POLICE CODE § 3300I.4(b)(1);
- Develop & implement a lactation accommodation policy informing employees of their Lactation rights, and the procedure for requesting lactation accommodations. SAN FRANCISCO POLICE CODE § 3300I.5(a); and,
- Engage in the interactive process to determine the appropriate lactation break periods and lactation location. SAN FRANCISCO POLICE CODE § 3300I.5(a).

The Lactation in the Workplace Ordinance includes an anti-retaliation provision, that prohibits employers from interfering.

restraining, or denying an employee's rights under the Ordinance, including:

- Requesting lactation accommodations;
- Filing a complaint with the San Francisco OLSE; or,
- Informing other employees about their rights under the Ordinance. SAN FRANCISCO POLICE CODE § 3300I.7(a).

The Lactation in the Workplace Ordinance does not contain a private right of action. Aggrieved employees may file a complaint with the San Francisco OLSE, which is empowered to investigate violations, conduct hearings, order temporary relief, issue warnings and notices to correct violations, and impose administrative penalties. SAN FRANCISCO POLICE CODE § 3300I.8.

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### **Astanehe Law Pro Tips**

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- San Francisco employers must provide a supportive environment that enables working mothers to breastfeed or express milk in public during working hours.
  - Nursing mothers are entitled to lactation breaks.
  - Employers must develop & implement a lactation accommodation policy.
  - Employers must engage in an interactive process to accommodate lactating mothers.
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# COMMUTER BENEFITS

## ORDINANCE

### *San Francisco Employers Must Establish a Commuter Benefits Program*

San Francisco Commuter Benefits Ordinance seeks to combat greenhouse gas emissions by mandating employers provide a commuter benefits program that supports and encourages employees to carpool, bike, or take transit to work. If you work in San Francisco, the Commuter Benefits Ordinance may cover your employer.

#### **Covered Employees**

The Commuter Benefits Ordinance applies to any person qualifying as an employee entitled to minimum wage or who has performed an average of at least ten hours of compensated work per week in San Francisco within the previous calendar month. SAN FRANCISCO ENVIRONMENT CODE § 427.

#### **Covered Employers**

The Ordinance covers employers located in San Francisco and employs more than twenty employees nationwide. SAN FRANCISCO ENVIRONMENT CODE § 427.

#### **Commuter Benefits Program**

Covered employers must offer one of the following transportation-related benefits to employees:

1. Pre-Tax Benefit: A Monthly pre-tax deduction, up to \$265/month, to pay for transit or vanpool expenses;
2. Employer-Paid Benefits: A monthly subsidy for transit or vanpool expenses equivalent to the price of the SF Muni "A" Pass;

3. Employer Provided Transportation: A company-funded bus or van service to and from the workplace; or,
4. Any combination of the above. SAN FRANCISCO ENVIRONMENT CODE § 427.

#### **Enforcement**

The San Francisco Department of Environment investigates violations of the Commuter Benefits Program. Despite not containing a private right of action, the City Attorney may bring a civil action to enforce the Ordinance. SAN FRANCISCO ENVIRONMENT CODE § 427.



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