

San Francisco's Family Friendly Workplace Amended Ordinance Gives Greater Flexibility

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San Francisco has significantly expanded its Family Friendly Workplace Ordinance to guarantee flexible or predictable work arrangements for employees with qualifying caregiver responsibilities when the employee provides notice of their preferred arrangement, unless the employer can demonstrate an undue hardship to the employer.

San Francisco's amended Family Friendly Workplace Ordinance ("FFWO") went into effect on July 12, 2022. Under the amended ordinance, any employer with 20 or more employees that are working in or teleworking out of San Francisco must grant covered employees a flexible or predictable working arrangement upon request—absent undue hardship—to assist with caregiving duties at home.

San Francisco first enacted the FFWO in 2014, which gave covered employees the right to request alternative work arrangements to assist with caregiving responsibilities, but did not entitle employees to a specific response to their requests. Under the previous FFWO, when a covered employer received a written request from a covered employee for a flexible or predictable working arrangement, the covered employer was required to: (i) meet with the requesting employee within 21 days of the request, and (ii) respond to the employee's request in writing, either approving or denying the request within 21 days (or longer by agreement) after meeting with the employee.

In contrast to the previous ordinance, the new amendment broadens the scope of covered employees under the FFWO and grants employees the *right* to a flexible or predictable working arrangement in order to accommodate caregiving responsibilities, among other changes. The City has said the amendment was made in part due to the COVID-19 pandemic's "great strains on caregivers in families." The amendment's authors explained that "[f]or employees working in positions where remote work is simply not possible, the ability to request flexibility or predictability may be especially critical."

Significant changes to the FFWO under the new amendment include the following:

- **Broadened scope of "caregiver" and "family relationship."** The definition of caregiving is

expanded to include care of any person over 65 years-old who is in a “family relationship” with the caregiving employee. “Family relationship” means a relationship in which a caregiver is related by blood, legal custody, marriage, or domestic partnership to another person as a spouse, domestic partner, child, parent, sibling, grandchild, or grandparent.

- **Covered Employees Include Teleworkers Living Outside San Francisco.** The amended FFWO covers employees who telework outside of San Francisco, if the employer maintains an office or worksite within San Francisco where the employee may work or was permitted to work from before the COVID-19 pandemic.
- **Covered Employees Have the Right to a “Flexible or Predictable Working Arrangement” Unless It Causes Undue Hardship.** Under the previous ordinance, covered employees could request a flexible or predictable work arrangement to accommodate caregiving responsibilities. Now, the amended FFWO requires employers to provide covered caregiving employees with a flexible or predictable work arrangement upon notice by the employee unless doing so would cause the employer undue hardship by causing the employer “significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the [e]mployer’s business.”
- **Process for Establishing a Flexible or Predictable Working Arrangement.** An employer must respond to the employee’s oral or written notice for a flexible or predictable working arrangement in writing within 21 days, unless the deadline is extended by agreement with the employee confirmed in writing. The employer may also elect to meet with the employee within 14 days of the employee’s initial notice. If the employer denies a flexible or predictable working arrangement that would be acceptable to the covered employee, the employer must explain the basis for why such an arrangement would cause undue hardship in writing and notify the employee of his or her rights to both reconsideration and to file a complaint with the Office of Labor Standards Enforcement (“OLSE”). An employer who does not agree to an employee’s noticed flexible or predictable working arrangement must also engage in a good faith interactive process with the employee to determine an arrangement that is acceptable to both the employee and the employer.
- **Increased Penalties.** The previous ordinance permitted the OLSE to require employers to pay the covered employee up to \$50 for each day that a violation occurred or continued. However, the amended FFWO permits penalties up to the cost of care the employee incurred, if greater than the sum of each \$50 violation. Additionally, the OLSE may order the employer to pay the city the costs incurred for investigating and remedying a violation, if greater than the sum of each \$50 violation.

As a result of the amended FFWO, employers with worksites in San Francisco should review the new law and update its policies accordingly.

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