

Simple Steps for the Early Evaluation, Management, and Resolution of Class Action Claims—Recent Developments

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In the past two weeks, the San Francisco Board of Supervisors passed bills to assist working mothers who are nursing their infants and to address gender pay disparities.

Lactation Locations

The first bill, passed on June 20, 2017, requires San Francisco employers to create lactation policies, including a written policy that provides for employees to request a lactation accommodation, and provide a space for mothers to express breast milk. Employers also will be required to provide working mothers a break for lactation. The break may run concurrently with the employee's normal paid breaks. However, any additional needed break time may be paid or unpaid at the employer's discretion.

Under this bill, which imposes additional space requirements beyond those called for in the California Labor Code, San Francisco employers must provide employees a location for lactation that is not a bathroom, is free of potential intrusion, is clean and safe, and has a surface (e.g., a counter or table), electricity, and a chair. There must also be a sink and refrigeration nearby. The room or location may be the employee's normal work area provided it meets these requirements. The location may also be used for other purposes, provided the primary function of the room is designated as a lactation location for the duration of an employee's need to express breast milk. If an employer uses a multi-purpose location, it must provide notice to employees that the primary use of the location is for lactation, which will take priority over other uses. In multi-tenant buildings where an employer cannot provide a lactation location in its own workspace, an employer can meet the requirements of this ordinance by providing a location shared by multiple employers, so long as that location will accommodate the number of employees who desire to use it.

To be exempt from the proposed law, an employer must show that a lactation accommodation presents an "undue hardship," which would require demonstrating that the requirement would cause "significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the Employer's business." This Ordinance becomes effective on January 1, 2018.

Equal Pay

The second bill, passed on June 27, 2017, prohibits San Francisco employers from considering the current or past salary of an applicant when determining whether to hire an applicant or the salary to offer the applicant. The law prohibits employers from asking applicants about current or prior salary, and further prohibits employers from disclosing a current or former employee's salary unless that person's salary history is publicly available or if the employee consents.

An employer may consider an applicant's current or past salary **only** if the applicant discloses his or her salary information voluntarily and without prompting. As a reminder, even if this information is voluntarily disclosed, salary history alone cannot be used to justify paying any employee of a different race, sex, or ethnicity less for doing substantially similar work under similar working conditions under California Labor Code Section 1197.5.

Employers may still discuss with applicants salary expectations and any unvested equity or other deferred compensation/bonuses forfeited by the applicant resigning from his or her current employer.

This Ordinance becomes effective on July 1, 2018. Upon the effective date, employers are required to post a notice in the workplace advising employees of their rights under the ordinance.

San Francisco Mayor Ed Lee is expected to sign both bills. For San Francisco employers, both ordinances will require a careful review of existing policies and procedures for: (1) employees to make a request for a lactation accommodation and (2) hiring managers and recruiters to review job applications, interview candidates, and make salary determinations.

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