

## **San Francisco Requires Employers to Pay for Parental Leave**

With the Mayor's signature, San Francisco has formally adopted the country's most generous paid parental leave policy with its new law requiring employers to provide fully-paid family leave for parents after the birth, adoption or foster placement of a child. Under the ordinance, employers will be obligated to make up the difference between an employee's salary and the state-sponsored Paid Family Leave benefits for a total of six weeks of paid time off. The "Paid Parental Leave Ordinance" will be phased in between January 2017 and 2018, giving smaller employers more time to prepare. This move toward more paid time off for parents mirrors a focus on paid family leave within the state and nationwide.

\*\*\*

San Francisco's ordinance supplements the benefits employees are already entitled to under California's Paid Family Leave system. Under the current state system, an employee with a new child currently receives 55% of his or her base pay (up to a maximum weekly amount) for six weeks. Notably, on April 11, 2016, Governor Jerry Brown signed into law AB908, which increases these state-paid Paid Family Leave benefits beginning in 2018, tiered depending upon wage level and capped at an annual wage equivalent of approximately \$108,000.

The new municipal statute requires employers with 20 or more employees to make up the difference between Paid Family Leave and the employee's base gross weekly wage for that same six-week period (subject to the cap). In other words, employers will be required, at least initially, to cover approximately 45% of the employee's regular base wage (up to the cap). While the city has not issued specific guidance regarding the intersection between AB908 and the San Francisco ordinance, the expectation is that employers' obligations will decrease once the increased state leave provisions go into effect in January 2018. Employers may require employees to use up to two weeks of accrued vacation and/or paid time off to cover the employer's obligations.

Under the new ordinance, employers must provide paid leave for all "covered employees"—employees who provide at least 8 hours of work per week for the employer (at least 40% of which are within the geographic boundaries of San Francisco), who are eligible to receive benefits under the California Paid Family Leave law, and who have worked for the employer for at least 180 days. If the employee voluntarily chooses not to return from the leave or ends his or her employment within 90 days of returning, the employee may be required to reimburse amounts received from the employer during the leave.

The rule will be phased in over time, allowing smaller employers more time to prepare. The requirement kicks in for employers with 50 employees or more in January 2017. For employers with between 35 and 49 employees, the rule will take effect in July 2017; those with 20 to 34 employees will be required to comply beginning in January 2018.

The ordinance includes other provisions of note, particularly regarding termination of employment. If a covered employee is involuntarily terminated before his or her leave begins, but within 90 days of the submission of a request for leave, the law creates a rebuttable presumption that the employer terminated the employee to avoid its paid family leave obligations. If the employer is not able to present clear and convincing evidence that the termination was solely for another reason, the employer will be required to provide the employee with the amounts he or she would have been entitled to during leave. In addition, if an employer terminates an employee during a leave period, the employer must continue to pay the employee the remaining benefit to which he or she would have been entitled.

Employers must also keep records of benefits provided for three years, must comply with notice and posting requirements, and may face administrative financial penalties for non-compliance.

### **National Trend**

Many private employers provide some form of paid leave for new parents. And many lawmakers are pushing for governments to require such leaves, or at the very least engaging in an increased dialogue on the issue. San Francisco is the first major city to adopt a fully-paid parental leave requirement. The city's new rule is not only consistent with this general movement towards providing greater paid leave benefits for new parents—it goes well beyond paid leave provisions in other cities and states (the vast majority of which require no paid leave whatsoever).

Many employees have a right under federal law to twelve weeks of unpaid family leave. Just a few states—California, Rhode Island, and New Jersey—provide partial pay for family leave. And, as noted above, California recently increased the benefits provided by its system—while the system still provides only partial pay, and only for six weeks. New York recently joined this select group, with a paid family leave policy that will provide up to two-thirds of an employee's pay for twelve weeks by the time it is fully implemented in 2021.

### **What To Do Next**

Employers should begin to put a plan in place now to implement policies that will address the San Francisco-specific requirements. As part of that process, employers should seek advice about how to comply—particularly regarding how to coordinate the benefits provided by the employer with the benefits provided by the state. With employers required to make up the difference between state benefits and an employee's base salary, and state benefits being paid in arrears, determining the proper benefit level for each employee will present complications that employers will want to plan for in advance. For additional information, please contact your Payne & Fears LLP lawyer, Melissa Clarke ([mec@paynefears.com](mailto:mec@paynefears.com)), or Matt Lewis ([mcl@paynefears.com](mailto:mcl@paynefears.com)).

A copy of the ordinance may be found [here](#).