



Fox Rothschild LLP
ATTORNEYS AT LAW



Guide to San Francisco Employment Laws

Revised May 2014

By: Tyreen Torner, Esq.

Fox Rothschild LLP
235 Pine Street, Suite 1500
San Francisco, CA 94104
Tel: 415.364.5559
Fax: 415.391.4436
www.foxrothschild.com

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

Table of Contents	
SAN FRANCISCO MINIMUM WAGE ORDINANCE	4
(a) Covered Employers.....	4
(b) Covered Employees.....	4
(c) Tips <i>Do Not</i> Count Toward Minimum Wage.....	4
(d) Commissions <i>Can</i> Count Toward Minimum Wage.....	4
(e) Employer Must Provide Notice at Time of Hire.....	4
(f) Employer Must Post Notice.....	5
(g) Required Documentation.....	5
(h) Retaliation Prohibited.....	5
(i) Enforcement and Liability.....	5
(j) Additional San Francisco Minimum Wage Ordinance Resources.....	6
(k) Other Local Minimum Wage Ordinances in California.....	6
PAID SICK LEAVE ORDINANCE	7
(a) Covered Employers.....	7
(b) Covered Employees.....	7
(c) Employees Not Covered by the Ordinance.....	7
(d) How Paid Sick Leave Accrues.....	7
(e) How Sick Leave Is Paid.....	9
(f) How Paid Sick Leave Can Be Used.....	9
(g) Effect on Employer's Existing Sick Leave Policy.....	10
(h) Other Rights and Obligations.....	10
(i) Enforcement and Liability.....	11
(j) Additional PSLO Resources.....	11
HEALTH CARE SECURITY ORDINANCE (Updated 2014)	12
(a) Covered Employers.....	12
(b) Covered Employees.....	13
(c) Employees Who Are Not Covered.....	13
(d) How to Calculate Required Health Care Expenditures (HCE).....	14
(e) Qualified Health Care Expenditures.....	15
(f) Excepted-Benefits HRAs – Additional Requirements.....	16
(g) Other Rights and Obligations.....	18
(h) Enforcement and Liability.....	20

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**21
 - (a) Covered Employers..... 21
 - (b) Covered Employees.....21
 - (c) Employees Exempted from Ordinance.....21
 - (d) Right to Request a Flexible or Predictable Working Arrangement.....22
 - (e) Employer Must Timely Respond to Request in Writing.....23
 - (f) Definition of “Bona Fide Business Reason”..... 23
 - (g) Employee May Request Reconsideration..... 24
 - (h) Arrangements Are Revocable.....24
 - (i) Retaliation Prohibited.....24
 - (j) Notice and Posting Requirements.....24
 - (k) Documentation Requirements.....24
 - (l) Implementation and Enforcement.....24
 - (m) Additional FFWO Resources.....25
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**25
 - (a) Covered Employers25
 - (b) Covered Employees.....26
 - (c) Commuter Benefit Options26
 - (d) Alternative Compliance Options27
 - (e) Annual Reporting Requirements.....27
 - (f) Businesses New to San Francisco.27
 - (g) Enforcement and Liability27
 - (h) Additional SFCBO Resources.....28
 - (i) *New: Most Bay Area Employers Must Offer Commuter Benefits Starting September 30, 2014*.....28
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**30
 - (a) Covered Employers..... 30
 - (b) Prohibited Inquiries into Criminal Background.....30
 - (c) How Information Can Be Used.....30
 - (d) Inquiries on Job Application Prohibited.....31
 - (e) Employers Must Follow Specific Procedures When Making Inquires.....31
 - (f) Limitations on Job Solicitations / Advertisements.....32
 - (g) Posting Requirement.....32

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

(h) Recordkeeping	32
(i) Retaliation Prohibited.....	32
(j) Administrative Enforcement.....	32
(k) Civil Enforcement.....	32
(l) Additional FCO Resources	32

HEIGHT AND WEIGHT DISCRIMINATION.....33

SAN FRANCISCO DRUG TESTING ORDINANCE.....33

(a) Restrictions.....	33
(b) Random Testing Prohibited.....	34
(c) Monitoring Toxic Exposures Permitted	34
(d) Employers Can Prohibit Workplace Drug Use or Intoxication	34

LAWS APPLICABLE TO CITY CONTRACTORS.....34

(a) Prevailing Wage.....	34
(b) Minimum Compensation Ordinance.....	34
(c) Health Care Accountability Ordinance	35
(d) Sweatfree Contracting Ordinance.....	35
(e) Displaced Worker Protection Act	35
(f) Non-Discrimination in Contracts	35



Guide to San Francisco Employment Laws

- Table of Contents
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

SAN FRANCISCO MINIMUM WAGE ORDINANCE

San Francisco has established a minimum wage higher than that required by California and federal law. Effective January 1, 2014, San Francisco's minimum is **\$10.74**, the highest in the nation.

- Covered Employers:** The San Francisco Minimum Wage Ordinance applies to any "employer" who directly or indirectly *employs someone for two or more hours per week within the geographic boundaries of San Francisco*. The ordinance defines "employer" broadly to include any person (including corporate officers or executives), association, organization, partnership, business trust, limited liability company or corporation who directly or indirectly (including through an agent, staffing agency or similar entity), employs or exercises control over the wages, hours or working conditions of any employee. (Note that, under this broad definition of "employer," individuals can be prosecuted for violations of the ordinance.)
- Covered Employees:** Employees are entitled to the San Francisco minimum wage if they *work more than two hours per week in San Francisco* (including on a part-time or temporary basis) and are not exempt from overtime provisions under federal and California law. Individuals who are the parents, spouses, domestic partners or children of the employers are not covered by the San Francisco minimum wage.
- Tips Do Not Count Toward Minimum Wage:** An employer cannot use an employee's tips as credit towards its obligations to pay the San Francisco minimum wage.
- Commissions Can Count Toward Minimum Wage:** Commissions can be counted toward payment of the San Francisco minimum wage. If the commissions earned and paid, together with other compensation paid to an employee, are equivalent to or greater than the current San Francisco minimum wage, then the city's minimum wage requirement is satisfied. For each pay period, employers must pay the employee an amount that equals or exceeds the hours that the employee worked multiplied by the current San Francisco minimum wage. If the employee's commissions for the pay period, together with other compensation earned, are less than that amount, employers must pay the difference. Whether the employer may thereafter recover any amounts based on commissions that the employee earns in a later pay period, or that are paid at a later date, depends on whether the employer and employee have an enforceable written agreement.
- Employer Must Provide Notice at Time of Hire:** Employers must provide each employee at the time of hire the employer's name, address and telephone number in writing.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- (f) **Employer Must Post Notice:** Employers must post a notice published each year by the San Francisco Office of Labor Standards Enforcement (OLSE) informing employees of the current minimum wage and their rights under the Minimum Wage Ordinance. The notice must be posted in a conspicuous place at any workplace or job site where an employee works. The notice must be posted in English, Spanish, Chinese and any other language spoken by at least five percent of the employees at the workplace or jobsite. Downloadable versions of the notice in English, Chinese and Spanish are available on the OLSE [website](#).
- (g) **Required Documentation:** Employers must retain employee payroll records for four years and must allow the OLSE to access such records.
- (h) **Retaliation Prohibited:** Employers cannot retaliate against employees for exercising their rights under the Minimum Wage Ordinance. Taking adverse action against an employee within 90 days of the person’s exercise of rights under the ordinance raises a “rebuttable presumption” that the action was retaliatory.
- (i) **Enforcement and Liability:**
 - The ordinance is enforced by the San Francisco OLSE, which is authorized to settle, request an administrative hearing or initiate a civil action to enforce the ordinance.
 - Employers being investigated by the OLSE must post or otherwise notify employees of the investigation.
 - The OLSE may order reinstatement, payment of back wages, payment of penalties in the amount of \$50 to each aggrieved employee for each day the violation occurred or continued, and revocation or suspension of the employer’s registration certificates, permits or licenses.
 - Additional Administrative Penalties:

Failure to maintain or retain payroll records	\$500
Failure to allow inspection of payroll records	\$500
Retaliation – per employee	\$1,000
Failure to post notice of minimum wage rate	\$500
Failure to provide notice of investigation to employees	\$500
Failure to post notice of violation to public	\$500
Failure to provide employer’s name, address and telephone number in writing	\$500

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

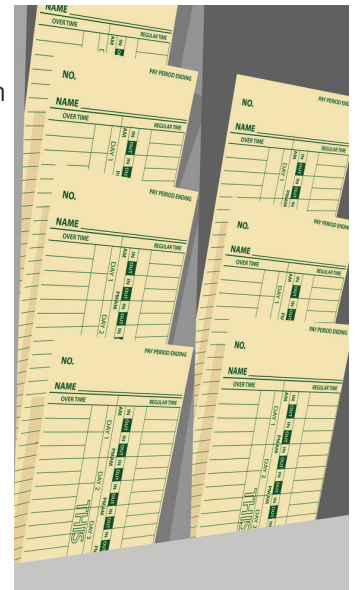
The penalties increase cumulatively by 50 percent for each subsequent violation of the same provision within a three-year period. The maximum penalty that may be imposed in a calendar year for each type of violation listed above is \$5,000, or \$10,000 if a citation for retaliation is issued. The OLSE may also assess enforcement costs, including reasonable attorneys' fees, that do not count toward the annual maximums.

(j) **Additional San Francisco Minimum Wage Ordinance Resources:**

- [San Francisco Minimum Wage Ordinance](#), San Francisco Administrative Code, Chapter 12R
- San Francisco Office of Labor Standards Enforcement's [Minimum Wage Ordinance Homepage](#)
- ["Frequently Asked Questions"](#) (updated December 1, 2008), San Francisco Office of Labor Standards Enforcement

(k) **Other Local Minimum Wage Ordinances in California:**

- **San Jose:** \$10.15 per hour effective January 1, 2014.
- **Richmond (pending):** This Bay Area city is expected to approve an [increase](#) in its minimum wage (currently \$8) as follows: \$9 beginning on the effective date (30 days after passage of ordinance); \$9.60 as of January 1, 2015; \$11.52 as of January 1, 2016; and \$12.30 as of January 1, 2017.
- **Berkeley (proposed):** The Berkeley City Council is considering implementing a local minimum wage of \$10.55 per hour. It does not currently have a city minimum wage requirement.
- **Oakland (proposed):** A proposed November 2014 ballot measure would increase Oakland's minimum wage from \$8 an hour to \$12.25, with future increases tied to inflation.



Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

PAID SICK LEAVE ORDINANCE (PSLO)

Effective February 5, 2007, San Francisco requires employers to provide sick leave to all employees who work in San Francisco.

- Covered Employers:** The PSLO applies to any “employer” who directly or indirectly employs someone within the geographic boundaries of San Francisco, regardless of the number of employees an employer has. The PSLO defines “employer” broadly to include any person (including corporate officers or executives), association, organization, partnership, business trust, limited liability company or corporation who directly or indirectly (including through an agent, staffing agency or similar entity), employs or exercises control over the wages, hours or working conditions of any employee. (Note that, under this broad definition of “employer,” individuals can be prosecuted for violations of the PSLO.)
- Covered Employees:** All employees who perform work in San Francisco, including on a part-time or temporary basis, accrue paid sick leave for those hours worked in San Francisco, *regardless of where the employer is located or the number of hours worked.*
- Employees Not Covered by the Ordinance:**
 - Employees covered by a collective bargaining agreement that expressly waives the benefit.
 - Employees in San Francisco solely to participate in San Francisco conventions or conferences for fewer than 56 hours within a calendar year.
 - Employees who perform work in San Francisco on an occasional basis amounting to 56 or fewer hours of work within a calendar year.
 - Independent contractors.
- How Paid Sick Leave Accrues:**
 - **Employees Begin To Accrue Sick Leave After 90 Days of Employment:** Paid sick leave begins to accrue 90 calendar days after the first day of work for an employer, irrespective of whether the employees actually worked during their eligibility period.
 - **One Hour of Paid Sick Leave Is Accrued for Every 30 “Hours Worked”:** Employees accrue one hour of paid sick leave for every 30 hours worked in San Francisco once paid sick leave begins to accrue. Paid sick leave accrues only in hour-unit increments, not in fractions of an hour.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

- **Definition of “Hours Worked”:**

Consistent with California state law, “hours worked” means the time during which an employee is subject to the control of the employer. For example, sick leave accrues during overtime hours but does not accrue when

employees are on vacation or out sick. Consult legal counsel to determine whether other time counts as “hours worked”.



- **Paid Sick Leave Carry Over Year-to-Year, but Are Capped:**

Accrued paid sick leave does not expire from year to year (whether calendar year or fiscal year), but the PSLO does limit the number of hours an employee can have “in the bank” at any given time to 72 hours or 40 hours, depending on the size of the employer:

- 10 or Fewer Employees: 40-Hour Accrual Cap
- Over 10 Employees: 72-Hour Accrual Cap

The following employees should be included in the employee “count”:

- Full- and part-time employees
- Temporary employees
- Employees working within and outside of San Francisco
- Employees performing work in different locations operated by the same employer.

- **Accrued Sick Leave Must Be Immediately Available:** Employers cannot wait to make accrued sick leave available at the end of the pay period or some other future point in time. Paid sick leave must be made available for use as soon as it is accrued.

- **Benefits Must Continue During Leave:** Benefits provided on an hourly basis must also be provided when employees are using paid sick leave hours.

- **Salaried Employees:** The PSLO rate of pay for employees paid on an annual salary is determined as follows:

- Divide the annual salary by 52 to get the weekly salary;
- Divide the weekly salary by the number of hours the employee is regularly scheduled to work.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

(e) How Sick Leave Is Paid:

- **Paid at the Employee's Regular Hourly Wage:** The rate of sick leave pay must be the same as the employee's hourly wage, not including tips.
- **When Payment Due:** Sick leave must be paid no later than the payday for the next regular payroll period after the sick leave was taken by the employee. However, if the employer has a reasonable verification requirement, the employer is not obligated to pay sick leave until the employee has complied with the verification requirement.
- **Cannot Be Cashed-Out:** Accrued unused paid sick leave does not get paid out at termination, resignation, retirement or other separation. (Note, however, that time accrued through a Paid Time Off (PTO) policy may require payout upon separation.) Unless expressly permitted by bona fide collective bargaining agreement, employees are prohibited from "cashing out" accrued paid sick leave hours.

(f) How Paid Sick Leave Can Be Used:

- **Paid Sick Leave Must Be Allowed for the Medical Need of the Employee or the Employee's Family Member:**
 - **Employee's Medical Need:** Paid sick leave must be allowed when the employee is ill or injured or is receiving medical care, treatment or diagnosis.
 - **Family Member's Medical Need:** Paid sick leave must be allowed to aid or care for a family member who is ill, injured or receiving medical care, treatment or diagnosis. "Family member" includes any of the following:
 - Children (including step-, adopted and foster children, children of a domestic partner and children of a person standing in loco parentis);
 - Parents (including relationships resulting from adoption, step-relationships and foster care relationships);
 - Legal guardians or wards;
 - Siblings (including relationships resulting from adoption, step-relationships and foster care relationships);
 - Grandparents (including relationships resulting from adoption, step-relationships and foster care relationships);
 - Grandchildren (including relationships resulting from adoption, step-relationships and foster care relationships);

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- Spouse or registered domestic partner under any state or local law; and
- Designated person (where the employee has no spouse or registered partner).

- **Employees Transferred to Work Outside San Francisco:** Employers can prohibit the use of paid sick leave hours if an employee is transferred out of San Francisco, but any accrued hours remain “in the bank” for *four years* from the employee’s last day of work in San Francisco, available for use should the employee return or be scheduled to work in San Francisco during that time.

- **Employers Can Require Use of Paid Sick Leave in Increments of One Hour or Less:** In most employment situations, a requirement that an employee take off more hours than requested would not be considered reasonable.

(g) **Effect on Employer’s Existing Sick Leave Policy:** An employer with a paid leave policy, such as a paid time off policy, is not required to provide additional sick leave if the following conditions are met:

- The paid leave can be used for the *same purposes* as paid sick leave under the PSLO; and
- The paid leave *meets the PSLO’s accrual requirements* (at least one hour for every 30 hours worked, subject to applicable caps).

Employers are free to provide a more generous leave policy than what is required under the PSLO.

(h) **Other Rights and Obligations:**

- **Employer Can Require Reasonable Notice:** Employers may require reasonable notification for use of paid sick leave. What is considered “reasonable” depends on the specific situation. In general, an employer’s policy should not be so onerous that it deters legitimate use of paid sick leave.
- **Employer Can Require Doctor’s Note:** Employers may require a doctor’s note or other verification after an employee’s use of paid sick leave for more than three consecutive work days. Employers who suspect abuse of sick leave may also require a doctor’s note or other verification. However, consistent with California law, employers should not request disclosure of the diagnosis of the specific health condition prompting the need for paid sick leave.
- **Employee Cannot Be Required to Find a Replacement Worker:** Employers cannot require employees to find replacement workers to cover the hours they are absent from work.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Retaliation Prohibited:** Employees are protected from retaliation for exercising their rights under this program. Employers cannot discharge, threaten to discharge, demote, suspend or in any manner discriminate or take adverse action in retaliation for exercising rights protected under the PSLO.
 - **Paid Sick Leave Cannot Count as an Unexcused Absence Under Employer's Attendance Policy:** Consistent with the PSLO's anti-retaliation provision, if an employer has an attendance policy that may lead to discipline, discharge, demotion, suspension or any other adverse action, an employee's use of paid sick leave *cannot count* as an absence under such a policy.
 - **Employer Must Post Notice:** Employers are required to post in a conspicuous place a notice published by the San Francisco Office of Labor Standards Enforcement (OLSE) advising employees of their PSLO benefits. The notice must be posted in English, Spanish, Chinese and any language spoken by at least five percent of the San Francisco workforce. The notice is provided to employees through the city's annual business registration mailing. A downloadable version is also available on the OLSE's website.
 - **Employer Must Retain Documentation:** Employers must document hours worked and paid sick leave taken by employees and keep those records for a minimum of four years.
- (i) **Enforcement and Liability:** There are significant penalties for noncompliance.
- **Private Right of Action:** Any aggrieved employee can bring a civil action against the employer on his or her behalf and on behalf of other aggrieved employees. Prevailing plaintiffs can be awarded back pay, reinstatement, payment of any sick leave unlawfully withheld multiplied by three, liquidated damages of \$50 per hour a violation occurred for each aggrieved employee, reasonable attorneys' fees and costs, and interest.
 - **The Office of Labor Standards Enforcement (OLSE):** The PSLO can also be enforced by the OLSE, which is authorized to settle, request an administrative hearing or initiate a civil action in the event of employer noncompliance or interference with OLSE investigative actions.
- (j) **Additional PSLO Resources:**
- [Paid Sick Leave Ordinance](#), San Francisco Administrative Code, Chapter 12W
 - San Francisco Office of Labor Standards Enforcement – [Paid Sick Leave Ordinance Homepage](#)

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS



HEALTH CARE SECURITY ORDINANCE (HCSO) (Updated 2014)

Effective January 2008, the San Francisco Health Care Security Ordinance (HCSO) requires employers to spend a minimum amount per hour on health care for their employees who work at least eight hours in San Francisco. The specific amount employers must spend is based on the hours worked by each employee. For 2014, the expenditure rate is \$2.44 for employers with 100 or more employees, and \$1.63 for employers with 20 to 99 employees. Employers with 19 or fewer employees are exempt from the ordinance.

- (a) **Covered Employers:** An employer is covered by the HCSO for any calendar quarter if it meets the following three conditions:
- Employs *one or more workers* within the geographic boundaries of the city and county of San Francisco;
 - Is required to obtain a valid San Francisco business registration certificate pursuant to Article 12 of the Business and Tax Regulations Code, and
 - Is either a *for-profit* business with 20 or more persons performing work or a *nonprofit* organization with 50 or more persons performing work. (This includes all persons working for the entity, regardless of where they are located.)

Note: The HCSO defines “employer” broadly to include any person (including corporate officers or executives), association, organization, partnership, business trust, limited liability company or corporation who directly or indirectly (including through an agent, staffing agency or similar entity), employs or exercises control over the wages, hours or working conditions of any employee. Also included in the HCSO’s definition of “employer” are employing units as defined in Section 135 of the California Unemployment Insurance Code and all members of a “controlled group of corporations” as defined in Section 1563(a) of the United States Internal Revenue Code.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

(b) Covered Employees

- **Eligibility Requirements:** Health Care Expenditures (HCE) must be paid to all employees who meet the following requirements:
 - Are entitled to be paid the minimum wage;
 - Have been employed for at least 90 days;
 - Regularly perform at least eight hours per week within the geographic boundaries of San Francisco, and
 - Do not meet one of the five exemption criteria discussed below.
- **Includes Undocumented Workers:** All employees who work in San Francisco—whether or not they are legally authorized to work in the United States—are covered by the HCSO.
- **Includes Exempt and Non-Exempt Employees:** For employees who are *not exempt* from the overtime provisions under federal and California law, the HCE is calculated based on all hours worked, including overtime hours up to the 172-hour monthly cap. For *exempt* employees, it is presumed that the minimum HCE should be calculated based upon a 40-hour workweek, unless there is evidence that the regular workweek is less than 40 hours, in which case the hours in a regular workweek will be used to calculate the required expenditure.
- **90-Day Eligibility Period:** Employees must be employed for 90 days to begin accruing benefits under the HCSO. If the employee separates from the employment prior to completing the 90-day eligibility period, the prior days of employment count toward the eligibility period if the employee returns to work within one year of the separation. If the employee separates after completing the eligibility period, the employer cannot require completion of a new eligibility period if the employee returns to work within one year of the separation.

(c) Employees Who Are Not Covered

- **Employees Receiving Health Benefits Through Another Employer Can Voluntarily Waive the Benefit:** Employers can obtain a voluntary waiver signed by a covered employee who already has health coverage through another employer. The San Francisco Office of Labor Standards Enforcement (OLSE) publishes an [Employee Voluntary Waiver Form](#) (available on its website) that employers can use. Note that if the employee has health insurance that is not provided through an employer—e.g., purchased individually—he or she does not qualify for this exemption.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Managers, Supervisors and Confidential Employees:** Employees are not eligible for HCSO benefits if they fall under the definition of “managers,” “supervisors” or “confidential employees” under California law and earn at least \$88,212 (\$42.41 hourly) in 2014. Consult legal counsel for further information on this exemption.
 - **Owners:** Employers are not required to make HCEs to or on behalf of the owner(s).
 - **Independent Contractors:** The HCSO applies only to employees.
 - **Nonprofit Trainees:** Workers employed by a nonprofit corporation for up to one year as trainees in a bona fide training program consistent with federal law are not entitled to benefits under the HCSO.
 - **Employees Covered by Medicare, TRICARE/CHAMPUS:** The HCSO does not apply to employees who are covered by Medicare (as distinguished from Medicaid/ Medi-Cal) or TRICARE/CHAMPUS (the federal health care programs for active duty and retired members of the uniformed services, their families and survivors).
 - **Employees of City Contractors Receiving Benefits Under the HCAO:** The HCSO does not apply to employees receiving health care benefits pursuant to the San Francisco Health Care Accountability Ordinance (HCAO), which generally requires city contractors and certain tenants to offer health plan benefits.
- (d) **How to Calculate Required Health Care Expenditures (HCE):**
- **Applicable HCE Rate Depends on Size of Employer:** The applicable HCE rate is adjusted annually and depends on the size of the employer. The size of the employer is determined by the number of “persons performing work” for the business.

Size of Employer	2013	2014
<i>Large</i> (100 or more employees)	\$2.33	\$2.44
<i>Medium</i> (20 – 99 employees)	\$1.55	\$1.63
<i>Small</i> (19 or fewer employees)	Exempt	Exempt

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

- **Definition of “Persons Performing Work” for Purpose of Determining Employer Size:** Most workers fall under this definition, regardless of where or how many hours they work. The following employees should be included in the count:
 - Permanent employees;
 - Temporary and seasonal employees;
 - Full-time and part-time employees;
 - Employees who work within *and* outside San Francisco;
 - Contracted employees (whether employed directly by the employer or through a temporary staffing agency, leasing company, professional organization or other entity);
 - Commissioned employees; and
 - Owners who perform work for compensation.
- **Fluctuating Number of Employees:** For businesses employing a fluctuating number of employees during a quarter (13 weeks), employer size is based on the *weekly average number of persons performing work for compensation during that quarter*. Note, however, that averaging is only permitted where the number of employees fluctuates from week to week.
- **Based on “Hours Paid” to the Employee:** For each employee, the minimum HCE is determined quarterly by multiplying the applicable HCE rate by the number of “hours paid” to the employee. “Hours paid” is defined as:
 - Hours for which the employee is paid wages for work performed (including overtime) within San Francisco; *and*
 - Hours for which the employee is entitled to be paid wages, including but not limited paid vacation hours, paid time off and paid sick leave hours.
- **“Hours Paid” Capped at 172 Hours/Month:** Employees can earn HCEs for up to 172 hours in a single month or 516 hours in a single quarter.
- (e) **Qualified Health Care Expenditures:**

CAUTION: The HCSO identifies several ways employers can meet their spending obligations, the most common of which are described below. However, federal requirements under the Affordable Care Act (ACA), also known as “Obamacare,” may conflict with or severely limit some of these options. **Employers should consult legal counsel before choosing or continuing a compliance option.**

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Group Health Insurance:** Employers' payments towards health insurance coverage for employees are qualified HCEs.
 - **City Option:** Employers can make direct payments to the city of San Francisco for their employees. The payments are applied towards one of two programs: (1) "Healthy San Francisco," a program that offers basic and ongoing medical care to San Francisco residents or (2) a medical reimbursement account.
 - **Excepted-Benefits Health Reimbursement Account (HRA):** With some limitations (discussed below), an employer-funded HRA that reimburses employees for "excepted benefits" will satisfy the HCSO. "Excepted Benefits," as defined under federal law, include vision benefits limited to the treatment of the eyes; dental benefits limited to the treatment of the mouth; medical indemnity insurance; long-term, nursing-home, home-health or community-based care; and coverage limited to a specific disease or illness.
- (f) **Excepted-Benefits HRAs – Additional Requirements:** The HCSO imposes additional employer obligations for Excepted-Benefits HRAs.
- **Definition of "Health Reimbursement Account":** HRAs are employer-funded, tax-advantaged employer health benefit plans that reimburse employees for out-of-pocket medical expenses.
 - **Definition of "Excepted Benefits":** In accordance with new federal rules, employees can use their HRA funds only for "excepted benefits" as defined. "Excepted Benefits" include vision benefits limited to the treatment of the eyes; dental benefits limited to the treatment of the mouth; medical indemnity insurance; long-term, nursing-home, home-health or community-based care; and coverage limited to a specific disease or illness.
 - **How Contributions "Count" Toward HCEs:**
 - Contributions to an Excepted-Benefits HRA that do not exceed the employer's spending requirements for an employee who works an average of 20 hours per week will satisfy the HCSO's expenditure requirements.
 - Contributions in excess of the spending requirements for a 20-hour-per-week employee will be credited toward the employer's HCSO spending requirements only in the amount the employee actually uses the excess contributions. If excess contributions are not used, the employer will be required to make remedy payments for the difference. To avoid this uncertainty, employers can automatically contribute HCEs earned beyond 20 hours per week to another compliance option, such as the City Option.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

- **Written Contribution Summary Required:** *Within 15 days* of the date of a contribution, employers must provide *written* summaries of reimbursement account contributions that include all of the following:

- Name, address and telephone number of any third party to whom the contribution was made;
- Date and amount of contribution;
- Date and amount of any debits or credits to the account since the most recent contribution summary provided to the employee;
- Account balance; and
- Any applicable expiration dates for the funds in the account.

The San Francisco Office of Labor Standards Enforcement (OLSE) has developed a sample **Contribution Summary**, which is available on its website.

- **Contribution and Summary Due Dates for HSAs:**

Quarter		Contribution Due Date (30 days after end of quarter)	Summary Due Date (15 days after contribution)
1Q	January 1 – March 31	April 30	May 15
2Q	April 1 – June 30	July 30	August 14
3Q	July 1 – September 30	October 30	November 14
4Q	October 1 – December 31	January 30	February 14

- **Requirements at Separation:** The employer must comply with the following requirements upon an employee's separation:
 - Any **remaining balance** in the account at the time of separation must remain available to the employee for a minimum of **90 days** from the date of separation.
 - Within **three days** following the separation, the employee must receive a written notice (**Separation Notice**). This notice must include the balance in the account and any applicable expiration dates.
 - **Funds already earned but not yet contributed** to the account must either be:
 - Contributed to the account at the time of separation, in which case an accounting of this contribution must be included in the Separation Notice; *or*

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE**
(Updated 2014)
- **FAMILY FRIENDLY WORKPLACE ORDINANCE**
(Effective 2014)
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE**
(Effective August 13, 2014)
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- Contributed to the account on the next regular contribution deadline (i.e., no later than 30 days after the end of the quarter), in which case the following criteria must be met:
 - The Separation Notice must indicate that the employee is entitled to a final health care expenditure to be paid prior to 30 days after the end of the quarter;
 - The employer must provide a Contribution Summary within 15 days of the post-separation contribution; and
 - The post-separation contribution must remain available to the employee for at least 90 days from the date of contribution.
- **Annual Reporting Requirement:** If an employer uses a reimbursement account to satisfy its obligations under the HCSO, it must report to the OLSE, on an annual basis, the terms of the account, including which medical expenses are eligible for reimbursement. The OLSE provides specific instructions on this reporting requirement on its [HCSO Homepage](#).

(g) **Other Rights and Obligations**

- **Funds Must Be Available for 24 Months:** Beginning January 1, 2012, employers must keep contributions available for at least 24 months after the date of the contribution.
- **Roll-Over of Any Balance as of December 31, 2011:** A 2011 amendment to the HCSO required that employers “roll over” any December 31, 2011 account balance to January 1, 2012. Employers could elect to have these rolled-over funds expire two years after the original contributions were made (staggered expiration dates) or have them expire 24 months from January 1, 2012.
- **Health Care Expenditures Must Be Made Quarterly:** HCEs must be made quarterly, within 30 days of the end of the preceding quarter:

Quarter		Contribution Due Date (30 days after end of quarter)
1Q	January 1 – March 31	April 30
2Q	April 1 – June 30	July 30
3Q	July 1 – September 30	October 30
4Q	October 1 – December 31	January 30

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Employers Cannot Deduct HCEs from Wages:** The minimum HCE *must be paid by the employer*; thus, a deduction from the employee's earned wages for deposit in the employee's health savings or flexible spending account, for example, will not satisfy the employer's obligations under the HCSO. Likewise, an employee's contribution towards his/her health insurance premium cannot be credited towards the employer's minimum HCE.
- **Employees Are Entitled to Any HCEs Earned but Not Yet Contributed at the Time of Separation:** Employers must contribute the applicable HCEs for all hours paid to a covered employee, even if the employment relationship is terminated before the end of the quarter. Employers that have not yet made the quarterly HCE for a covered employee must make the expenditure either at the time of separation or on the next quarterly contribution deadline (i.e., 30 days after the end of the quarter). If an employer has chosen to purchase health insurance for its covered employees, COBRA payments to continue health insurance coverage also qualify as valid health care expenditures.
- **Simply Offering a Health Insurance Plan May Not Be Enough:**
 - If the amount the employer pays toward health insurance premiums for each employee meets the minimum required HCE under the HCSO, the employer will have no further obligations. If the amount spent on premiums does not meet the minimum expenditure amount set by the HCSO, the employer must decide how it will spend the difference.
 - An employer who establishes or maintains a health insurance program that requires contributions by a covered employee must do more than offer the employee an opportunity to participate in such a program. If the employee declines to participate in such a program, the employer must satisfy its spending requirement in some other manner, even if the amount the employer would spend on insurance premiums exceed the required HCE.
 - Employers who provide health benefits only to full-time employees must be sure to make the requisite HCEs for all part-time employees who work *at least eight hours* per week in San Francisco.
- **Employer Must Maintain Documentation:** Employers must track HCEs for each covered employee and keep all relevant records for a minimum of four years.
- **Annual Report Due April 30 of Each Year:** Employers must also report HCEs on an annual basis using the Annual Reporting Form (ARF) available on the San Francisco Office of Labor Standards Enforcement's [HCSO Homepage](#). The ARF must be submitted to the OLSE by April 30 of each year. Employers who fail to submit a completed form by the April 30 due date are subject to penalties and other corrective action.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **City Option Notice to Employees:** If an employer elects to make contributions to the City Option, it must provide employees a one-time **Employee Health Care Payment Confirmation**.
 - **Employers Cannot Avoid Coverage by Reducing Workforce:** The HCSO makes it unlawful for an employer to reduce the number of employees in order to avoid being considered a covered employer or to be subject to a lower health care expenditure rate.
 - **Discrimination and Retaliation Prohibited:** It is unlawful for an employer to discipline, discharge, demote, suspend or take any other adverse action against an employee for exercising his or her rights under the HCSO. It is illegal for an employer to fire an employee who does not wish to waive his or her right to the mandatory health care expenditure, even if that employee is already receiving health insurance coverage from another employer.
 - **Customer Surcharges:** If an employer imposes a surcharge on its customers to cover the cost of the HCE requirement, the full amount of the surcharge must be spent on employee health care. Violators can be investigated for consumer fraud.
- (h) **Enforcement and Liability:** The HSCO is enforced by the OLSE, which is authorized to settle, request an administrative hearing or initiate a civil action in the event of employer noncompliance or interference with OLSE investigative actions.
- **Administrative Penalties:** In addition to corrective action, the OLSE can impose administrative penalties as follows:

Violation	Penalty
Failure to make required health care expenditures	Up to \$1,000 for each employee for each week that expenditures were not made. (The OLSE is <i>required</i> to impose penalties upon employers who fail to make the required HCEs within five business days of the quarterly due date.)
Failure to cooperate with OLSE audit or investigation	\$25 per day for each day violation occurs.
Failure to allow access to records of health care expenditures	\$25 for each worker whose records are at issue for each day the violation occurs.
Failure to maintain or retain accurate and complete records	\$500
Failure to satisfy annual reporting requirement	\$500
Retaliation, harassment or discrimination	\$100 for each aggrieved employee for each day the violation occurs.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

- **Additional HCSO Resources:**

- [Health Care Security Ordinance](#), San Francisco Admin. Code, Chapter 14
- San Francisco Office of Labor Standards Enforcement (OLSE) [HCSO Website](#)
- [“City Option” Website](#)

FAMILY FRIENDLY WORKPLACE ORDINANCE (FFWO) (Effective 2014)

Effective January 1, 2014, the San Francisco Friendly Workplace Ordinance (FFWO) gives certain employees the right to request a flexible or predictable work arrangement to assist with caregiving responsibilities, subject to the employer's right to deny a request based on business reasons.

- (a) **Covered Employers:** The FFWO applies to employers who regularly employ *20 or more employees, regardless of location*, including through a temporary services or staffing agency. “Employer” is defined broadly to include any person (including corporate officers or executives), association, organization, partnership, business trust, limited liability company or corporation who directly or indirectly (including through an agent, staffing agency or similar entity), employs or exercises control over the wages, hours or working conditions of any employee. “Employer” also includes any successor in interest of an employer.
- (b) **Covered Employees:** The FFWO applies to employees, including part-time employees, who meet the following requirements:
 - Employed within the geographic boundaries of the City and County of San Francisco;
 - Have been employed for six months or more; and
 - Work at least eight hours per week on a regular basis.
- (c) **Employees Exempted From Ordinance:**
 - **Certain Public Safety and Public Health Employees:** Private employees working in public safety or public health functions may be exempt from the FFWO, upon request of the employer, based on the employer's operational requirements.
 - **Waiver Through Collective Bargaining:** The ordinance does not apply to employees covered by a bona fide collective bargaining agreement (CBA) to the extent the requirements of the FFWO are expressly waived in the CBA in clear and unambiguous terms.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- (d) **Right to Request a Flexible or Predictable Working Arrangement:** Any covered employee may request a flexible or predictable working arrangement subject to the following requirements:
- **Caregiving Purpose:** The reason for the request must be to assist with the caregiving responsibilities for any of the following persons:
 - Children for whom the employee has assumed parental responsibility;
 - Employee's parent age 65 or older; or
 - Person with a "serious health condition" in a "family relationship" with the employee.
 - **Definition of "Serious Health Condition":** An illness, injury, impairment or physical or mental condition that involves either of the following: (1) inpatient care in a hospital, hospice or residential health care facility; or (2) continuing treatment or supervision by a health care provider.
 - **Definition of "Family Relationship":** A relationship in which a caregiver is related by blood, legal custody, marriage or domestic partnerships as defined in San Francisco Administrative Code Chapter 62 or California Family Code § 297.
 - **Examples of Arrangements Employees Can Request:** The request may include but is not limited to a change in the employee's terms and conditions of employment as they relate to:
 - The number of hours the employee is required to work;
 - The times when the employee is required to work;
 - Where the employee is required to work;
 - Work assignments; or
 - A predictable work schedule.
 - **Request Must Be Specific and Formalized in Writing:** An employee's initial request for a flexible or predictable working arrangement may be made *orally*, after which the employer must instruct the employee *to prepare a written request* that includes all of the following:
 - The requested arrangement;
 - The requested effective date;
 - The requested duration; and
 - An explanation of how the request is related to caregiving.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

- **Employee Limited to Two Requests Every 12 Months:** Generally, employers must consider up to two requests made by an employee every 12 months.
 - **Exception for Revocation of Flexible or Predictable Working Arrangement by Employer:** Each time the employer revokes a flexible or predictable working arrangement, the employee can make an additional request.
 - **Exception for Major Life Event:** An employee can exceed two requests every 12 months if he or she experiences a “major life event,” which is defined as either (a) the birth of an employee’s child; (b) the placement with the employee of a child through adoption or foster care; or (c) an increase in an employee’s caregiving duties for a person with a “serious health condition” who is in a “family relationship” with the employee.
- (e) **Employer Must Timely Respond To Request in Writing:**
 - **Meet With Employee Within 21 Days:** The employer must meet with the employee within 21 days of a request.
 - **Respond in Writing Within 21 Days of Meeting:** The employer must consider and respond to a request in writing within 21 days of the meeting. The deadline may be extended by agreement with the employee confirmed in writing.
 - **May Request Verification:** An employer can require verification of caregiving responsibilities as part of the request.
 - **Decision to Grant Request:** An employer who grants the request must confirm the arrangement *in writing* to the employee.
 - **Decision to Deny Request:** An employer who denies a request must provide a *written* notice to the employee that complies with the following requirements:
 - Explains the bona fide business reasons for the denial;
 - Notifies the employee of the right to request reconsideration;
 - Includes a copy of the text of San Francisco Administrative Code § 12Z.6 (right to request reconsideration).
- (f) **Definition of “Bona Fide Business Reason”:** Employers can deny a request for a flexible or predictable working arrangement based on a “bona fide business reason,” which can include but is not limited to the following:
 - The identifiable cost of the requested change, including but not limited to the cost of productivity loss, retaining or hiring employees or transferring employees from one facility to another.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- 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 the employee proposed to work.
- (g) **Employee May Request Reconsideration:** If the employer denies a request for a flexible or predictable working arrangement, the employee may submit to the employer a request for reconsideration within 30 days of the decision. The employer must meet with the employee to discuss the request for reconsideration within 21 days after receiving the request. The employer must inform the employee of its final decision in writing within 21 days after this meeting. If the request for reconsideration is denied, the notice must explain the employer's bona fide business reasons for the denial.
- (h) **Arrangements Are Revocable:** Either the employer or employee may revoke a flexible or predictable working arrangement with 14 days' notice to the other party. The employee may submit a request for a different flexible or predictable working arrangement. Each time the employer revokes a flexible or predictable working arrangement, the employee can make an additional request.
- (i) **Retaliation Prohibited:** Employers are prohibited from discharging, threatening to discharge, demoting, suspending or otherwise taking an adverse employment action against employees who exercise their rights under the ordinance. Employers are also prohibited from interfering with employees' rights under the ordinance.
- (j) **Notice and Posting Requirements:** Employers must post a **FFWO Notice** informing employees of their rights under the ordinance. The notice is available on the [OLSE's FFWO website](#). Employers must post the notice in English, Spanish, Chinese and any other language spoken by at least five percent of the workers at that location.
- (k) **Documentation Requirements:** Employers must retain documentation required by the ordinance for three years from the date of the request for a flexible or predictable working arrangement and must allow the OLSE access to inspect the records.
- (l) **Implementation and Enforcement:** The FFWO is enforced by the OLSE. While the OLSE is not currently authorized to find violations based on the validity of the employer's bona fide business reasons for denying an employee's request, the agency is authorized to determine violations of the ordinance's procedural, notice, posting and documentation requirements. Starting January 1, 2015, the

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

OLSE can start punishing violations with administrative penalties up to \$50 for each aggrieved employee for each day that the violation occurred or continued. The OLSE may also initiate a civil action.

(m) **Additional FFWO Resources:**

- [Family Friendly Workplace Ordinance](#), San Francisco Admin. Code, Chapter 12Z
- San Francisco [OLSE's FFWO webpage](#)



SAN FRANCISCO COMMUTER BENEFITS ORDINANCE (SFCBO)

Effective January 19, 2009, the San Francisco Commuter Benefits Ordinance (SFCBO) requires San Francisco employers with 20 or more employees to provide commuter benefits to employees who work an average of at least 10 hours per workweek within the geographic boundaries of San Francisco.

- (a) **Covered Employers:** The SFCBO applies to employers meeting the following three criteria:
- **Has 20 or more employees:** All persons performing work for the employer on a full-time, part-time or temporary basis, including those who perform work outside the geographic boundaries of San Francisco, are counted, including individuals placed through a temporary service or staffing agency.
 - **Does business within San Francisco:** The SFCBO also applies to employers based outside of San Francisco but with employees working in the city if the employer is still required to obtain a business registration certificate.
 - **Is required to obtain a business registration certificate.**

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

The Ordinance defines “employer” broadly to include any person (including corporate officers or executives), association, organization, partnership, business trust, limited liability company or corporation who directly or indirectly (including through an agent, staffing agency or similar entity), employs or exercises control over the wages, hours or working conditions of any employee. (Note that, under this broad definition of “employer,” individuals can be prosecuted for violations of the PSLO.)

(b) **Covered Employees:** To qualify for benefits under the SFCBO, the employee must meet the two following requirements:

- Works at least 10 hours per workweek, averaged over one month, within the geographic boundaries of the City and County of San Francisco and for the same employer.
- Qualifies as an employee entitled to minimum wage under California minimum wage law.

(c) **Commuter Benefit Options:** Employers must offer *at least* one of the following transportation benefits:

- **Pre-Tax Employee-Paid Payroll Deductions:** Through their paycheck, employees have the option to set aside pre-tax funds each month to pay for their transit, vanpool and parking expenses. As of January 1, 2014, the IRS pre-tax limit is \$130/month for transit or vanpool expenses and \$250/month for parking expenses, including parking at or near public transportation. Subsidies are typically provided in the form of a transit card or voucher.
- **Tax-Free Employer-Paid Subsidy:** The employer pays a monthly subsidy for transit or vanpool costs equivalent to the value of a San Francisco Muni Fast Pass ‘A’ (currently \$76/month). Bicycle commuters may be offered a subsidy up to \$20/month to cover bicycle maintenance and repairs, provided they do not receive an additional transit benefit. As with the Pre-Tax Employee-Paid Benefit, employers do not pay payroll taxes and employees do not pay federal or payroll taxes on the benefit amount, up to the current IRS pre-tax limit. Employers may offer a subsidy in excess of the monthly IRS pre-tax limit but will be required to pay taxes on the amount of the benefit that exceeds the pre-tax limit. Subsidies are typically provided in the form of a transit card or voucher.
- **Employer-Provided Transit:** Employer offers workers free shuttle service on a company-funded bus or van between home and place of business.



Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS



(d) Alternative Compliance Options

- **Carpooling:** Businesses not located near transit lines may offer carpool benefits to their employees, such as subsidizing parking and toll costs or priority parking for carpoolers, to meet the SFCBO's requirements and encourage ridesharing to work. If this option is offered, **pre-tax benefits for an employee who chooses to travel on transit or by vanpool must also be made available.** Carpool subsidies are not tax-free under current IRS guidelines.
 - **Telecommuting:** San Francisco businesses with employees who solely telecommute and do not travel to an office location are not required to provide a commuter benefits program. However, if employees telecommute on a temporary basis or part of the week only, the employer is required to comply with the ordinance and offer a commuter benefits program. Businesses with all employees telecommuting are still required to complete the annual Compliance Reporting Form.
- (e) **Annual Reporting Requirements:** All San Francisco employers, whether or not they need to comply with the SFCBO, must submit an annual Compliance Reporting Form to the CommuteSmart program at the San Francisco Department of Environment by April 30 of each year. The reporting form can be found on the Environment Departments [website](#).
- (f) **Businesses New to San Francisco:** New San Francisco employers have 90 days to set up a commuter benefits program and submit a Compliance Reporting Form.
- (g) **Enforcement and Liability:** The ordinance is enforced by the San Francisco Department of Environment. Failure to comply with the SFCBO, including its reporting requirements, will result in an "infraction" of monetary fines against the employer of \$100 for the first violation, \$200 for a second violation within the same year, and \$500 for each additional violation within the same year.

Guide to San Francisco Employment Laws

- Table of Contents
- SAN FRANCISCO MINIMUM WAGE ORDINANCE
- PAID SICK LEAVE ORDINANCE
- HEALTH CARE SECURITY ORDINANCE (Updated 2014)
- FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)
- SAN FRANCISCO COMMUTER BENEFITS ORDINANCE
- FAIR CHANCE ORDINANCE (Effective August 13, 2014)
- HEIGHT AND WEIGHT DISCRIMINATION
- SAN FRANCISCO DRUG TESTING ORDINANCE
- LAWS APPLICABLE TO CITY CONTRACTORS

(h) **Additional SFCBO Resources:**

- [San Francisco Commuter Benefits Ordinance](#), San Francisco Environment Code, Section 427
- San Francisco Department of Environment [Commuter Benefits Program Webpage](#)
- “[Implementing a Commuter Benefits Program: 2014 Guide for San Francisco Employers](#),” San Francisco Department of Environment

(i) **New: Most Bay Area Employers Must Offer Commuter Benefits Starting September 30, 2014**

On March 26, 2014, the Metropolitan Transportation Commission and Bay Area Air Quality Management District (the District) announced the launch of the Bay Area Commuter Benefits Program, a joint pilot program that requires all employers with 50 or more full-time employees in the Bay Area to offer employees commuter benefits by September 30, 2014. The program is authorized by SB 1339, which Governor Jerry Brown signed in September 2012. It will be implemented on a pilot basis through the end of 2016.

- **Geographic Area Covered:** [The District](#) consists of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Santa Clara Counties, as well as the southern portion of Sonoma County and the southwestern portion of Solano County. This region includes the following cities:
 - San Mateo, Redwood City, Palo Alto, Cupertino, San Jose, Milpitas
 - San Rafael, Napa, Petaluma, Santa Rosa, Sonoma, St. Helena, Fairfield
 - Oakland, Berkeley, Richmond, San Leandro, Hayward, Union City, Fremont
 - Vallejo, Martinez, Concord, Pleasant Hill, Walnut Creek, Dublin, Pleasanton, Livermore
 - San Francisco (which has had the same requirements since 2009)
- **Covered Employers:** Any public, private or nonprofit entity that has an average of 50 or more full-time employees per week working within the geographic boundaries of the District.
- **Covered Employees:** Employees who work at least 20 hours per week within the geographic boundaries of the District, excluding seasonal/temporary employees.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE**
(Updated 2014)
- **FAMILY FRIENDLY WORKPLACE ORDINANCE**
(Effective 2014)
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE**
(Effective August 13, 2014)
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Required Benefits:** By September 30, 2014, covered employers must offer one or more of the following commuter benefit options to their covered employees:
 - Option 1: Pre-Tax Benefit - Allow employees to exclude up to \$130 of their transit or vanpooling expenses each month from taxable income.
 - Option 2: Employer-Provided Subsidy - Provide a subsidy to reduce or cover employees' monthly transit or vanpool costs, up to \$75 per month.
 - Option 3: Employer-Provided Transit - Provide a free or low-cost transit service for employees, such as a bus, shuttle or vanpool service.
 - Option 4: Alternative Commuter Benefit - Provide an alternative commuter benefit that is as effective in reducing single-occupancy commute trips as Options 1, 2 or 3.
- **Registration and Reporting Requirements:** By September 30, 2014, all Bay Area employers, whether or not they need to comply with the Bay Area Commuter Benefit Program, must register online at <https://commuterbenefits.511.org/>. If the employer is required to provide benefits, it must identify the benefits being offered at the time of registration. Thereafter, employers are required to update their registration form on an annual basis.
- **Additional Resources:**
 - [511.org](https://www.511.org/) – Employer Assistance Program
 - [Bay Area Air Quality Management District's website](http://www.bayareaairquality.org/)



Guide to San Francisco Employment Laws

- Table of Contents
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

FAIR CHANCE ORDINANCE (FCO) (Effective August 13, 2014)

Starting August 13, 2014, the Fair Chance Ordinance, San Francisco Police Code, Article 49, requires employers to follow strict rules regarding applicants' and employees' criminal history.

- (a) **Covered Employers:** The ordinance applies to employers with 20 or more employees regardless of location but only to employment situations that are located in whole or in substantial part in San Francisco.
- (b) **Prohibited Inquiries into Criminal Backgrounds:** Employers cannot consider or inquire into any of the following:
- **An arrest not leading to a conviction, other than an “unresolved arrest”.** An “unresolved arrest” is an arrest in “an active pending criminal investigation or trial that has not yet been resolved”. An arrest is considered “resolved” if the “arrestee was released and no accusatory pleading was filed charging him or her with an offense” or if the charge has been “dismissed or discharged”.
 - Participation in or completion of a **“diversion or deferral of judgment program”**.
 - A conviction that has been **“judicially dismissed, expunged, voided, invalidated or otherwise rendered inoperative”**.
 - A conviction or other determination in the **juvenile justice system**.
 - A conviction that is **more than seven years old** measured from date of sentencing.
 - **Criminal offenses other than felonies or misdemeanors**, such as infractions.
- (c) **How Information Can Be Used:**
- **Information Must Be “Directly Related” to the Job:** Only those convictions and unresolved arrests that *directly relate to the job in question* may be considered. A conviction or unresolved arrest is considered “directly related” if the underlying conduct has a direct and specific negative bearing on the person’s ability to perform the duties of the job in question.



Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Employer Must Consider Mitigating Factors:** The employer must consider the time that has elapsed since the occurrence giving rise to the conviction or unresolved arrest and any evidence of inaccuracy, rehabilitation or other mitigating factors.
- (d) **Inquiries on Job Application Prohibited:** Employers cannot inquire about criminal history at the beginning of the hiring process, including in a job application form.
- (e) **Employers Must Follow Specific Procedures When Making Inquires:**
 - **Inquiry Must Occur *After* First Live Interview or Conditional Job Offer:** Inquiry into the criminal history of an applicant is permissible *only after the first “live interview”* (in person or via telephone or video-conferencing) or, at the employer’s discretion, *after a conditional offer of employment*. If the timing is proper, the employer may inquire about criminal history and may receive information through a background check report.
 - **Pre-Inquiry Notice to Applicant or Employee:** Before an employer can ask an applicant or employee about any criminal history, the employer must provide a copy of the [FCO Official Notice](#). If the employer is obtaining this information through a background check report, it has to comply with existing notice requirements under federal and state laws.
 - **Conduct Individualized Assessment:** In making employment decisions based on criminal history, the employer must conduct an “individualized assessment,” considering only “directly related” convictions/unresolved arrests, the time that has elapsed since the conviction/unresolved arrest, any evidence of inaccuracy, any evidence of rehabilitation or other mitigating factors.
 - **Provide Notice of Prospective Adverse Action:** If the employer intends to base an adverse employment action on the applicant’s or employee’s criminal history, before taking any adverse action, the employer must notify the applicant or employee of the prospective adverse action and the basis for it. If the adverse action is based on information in a background check report, the employer must also provide the applicant or employee a copy of the report.
 - **Allow Applicant/Employee Seven Days to Produce Evidence of Inaccuracy or Mitigation:** The applicant or employee must be provided at least seven days from the date of the notice of prospective adverse action to give the employer “notice of evidence” of inaccuracy, rehabilitation or other mitigating factors. If such information is presented, the employer must delay the prospective adverse action for a “reasonable period after receipt of the information,” during which the employer must reconsider the prospective adverse action in light of the information.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- **Provide Notice of Final Adverse Action:** The employer must provide the applicant or employee a notice of the final adverse employment action.
- (f) **Limitations on Job Solicitations/Advertisements:** In any advertisements or solicitations for employees that are “reasonably likely to reach” persons who are “reasonably likely to seek employment in” San Francisco, the employer must state that the employer will consider for employment qualified applicants with criminal histories. Such solicitations or advertisements cannot state that persons with an arrest or conviction will not be considered for employment.
- (g) **Posting of Notice:** The ordinance requires employers to post the [FCO Official Notice](#) in appropriate locations that would inform persons of their rights under the ordinance.
- (h) **Recordkeeping:** For a period of three years, employers are required to maintain records of their employment decisions that would be sufficient for the OLSE to monitor compliance. In addition, employers must comply with annual reporting requirements specified by the OLSE.
- (i) **Retaliation Prohibited:** Employers are prohibited from retaliating against persons who exercise their rights under the ordinance. Taking an adverse action against a person within 90 days of the exercise of his or her rights creates a rebuttable presumption that the adverse action was retaliatory.
- (j) **Administrative Enforcement:** The OLSE is charged with enforcing the ordinance and has rulemaking authority.
 - The OLSE is prohibited from finding violations based on an employer’s decision that information is “directly related” to the position. The OLSE can, however, find violations of other provisions of the ordinance, including whether the employer failed to conduct the required “individualized assessment”.
 - For the first violation, or for any violation during the first twelve months following the operative date of August 13, 2014, the OLSE can only issue warnings and notices to correct and must offer the employer assistance on how to comply with the ordinance. Second penalties are subject to a \$50 penalty. Third and subsequent penalties are subject to a \$100 penalty.
- (k) **Civil Enforcement:** The city may bring a civil action within one year after the date of the violation. There is no private right of action.
- (l) **Additional FCO Resources:**
 - San Francisco Fair Chance Ordinance, San Francisco Police Code, Article 49
 - OLSE’s FCO Webpage

Guide to San Francisco Employment Laws

- Table of Contents
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

HEIGHT AND WEIGHT DISCRIMINATION

San Francisco prohibits employment discrimination and harassment based on height and weight. The employer advocating the use of a weight or height standard bears the burden of proving the standard is a bona fide occupational qualification. San Francisco also requires employers to provide “readily achievable modifications in the workplace including, but not limited to, accessible furnishings, workplace layout and equipment”.

Employers must also ensure that common areas such as employee lounges, cafeterias, health units and exercise facilities are accessible to people of all sizes. These requirements are enforced by the San Francisco Human Rights Commission and are codified in [Chapter 12A of the San Francisco Administrative Code](#) and [Article 33, § 3303, of the San Francisco Police Code](#).



SAN FRANCISCO DRUG TESTING ORDINANCE

Since 1985, San Francisco has restricted drug testing of employees. The ordinance, [San Francisco Police Code, Article 33A, § 3300A.5](#), does not restrict drug testing of applicants.

- (a) **Restrictions:** San Francisco [requires](#) that *all* of the following conditions exist before a drug test is performed on an employee:
- Employer has reasonable grounds to believe that an employee’s faculties are impaired on the job;
 - The employee works in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; *and*
 - The employer provides the employee, at the employer’s expense, the opportunity to have the sample tested or evaluated by a state-licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the results.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- (b) **Random Testing Prohibited:** Employers cannot request or require random or company-wide blood, urine or encephalographic testing.
- (c) **Monitoring Toxic Exposures Permitted:** Employers can conduct medical screening, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of their job responsibilities.
- (d) **Employers Can Prohibit Workplace Drug Use or Intoxication:** San Francisco does not restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline employees for being under the influence of intoxicating substances during work hours.



LAWS APPLICABLE TO CITY CONTRACTORS

- (a) **Prevailing Wage:** Workers on government-funded construction projects must be paid prevailing wages. In California, the Department of Industrial Relations sets the prevailing wage rate for each craft. San Francisco has adopted these rates for city-funded projects. ([SF Admin. Code § 6.22\(E\)](#).) The current prevailing wage rates are available on the California Department of Industrial Relations [website](#).
- (b) **Minimum Compensation Ordinance (MCO):** The MCO ([SF Admin. Code § 12P](#)) generally requires city contractors that provide services and tenants at the San Francisco Airport to provide to their covered employees: (1) no less than the MCO hourly wage in effect; (2) 12 paid days off per year (or cash equivalent); (3) 10 days off without pay per year. The Minimum Compensation Ordinance rate is adjusted on January 1 each year. The MCO hourly wage for 2014 is \$12.66.

Guide to San Francisco Employment Laws

- **Table of Contents**
- **SAN FRANCISCO MINIMUM WAGE ORDINANCE**
- **PAID SICK LEAVE ORDINANCE**
- **HEALTH CARE SECURITY ORDINANCE (Updated 2014)**
- **FAMILY FRIENDLY WORKPLACE ORDINANCE (Effective 2014)**
- **SAN FRANCISCO COMMUTER BENEFITS ORDINANCE**
- **FAIR CHANCE ORDINANCE (Effective August 13, 2014)**
- **HEIGHT AND WEIGHT DISCRIMINATION**
- **SAN FRANCISCO DRUG TESTING ORDINANCE**
- **LAWS APPLICABLE TO CITY CONTRACTORS**

- (c) **Health Care Accountability Ordinance (HCAO):** The HCAO ([SF Admin. Code, Ch. 12Q](#)) generally requires city contractors and certain tenants to offer health plan benefits to their covered employees, to make payments to the city for use by the Department of Public Health or, under limited circumstances, to make payments directly to their covered employees. Effective July 1, 2013, covered employers who make payments to San Francisco General Hospital to satisfy the requirements of the HCAO must pay \$4 per hour, capped at \$160 per workweek. This rate is adjusted for inflation annually on July 1.
- (d) **Sweatfree Contracting Ordinance:** The Sweatfree Contracting Ordinance ([SF Admin. Code, Ch. 12U](#)) generally prevents the San Francisco city and county government from purchasing goods produced in sweatshops that refuse to meet minimum standards for wages and working conditions. Effective January 24, 2013, the minimum wage rate, including benefits, is \$11.27 for products produced in the 48 contiguous states and D.C., \$14.08 for Alaska and \$12.96 for Hawaii. The minimum rate for non-U.S. produced goods varies by country. See San Francisco's Sweatfree Contracting Ordinance [webpage](#) for current wage rates.
- (e) **Displaced Worker Protection Act:** Among other provisions, the Displaced Worker Protection Act (San Francisco Police Code, Article 33C) requires security and janitorial or building maintenance contractors that employ 25 or more persons to implement a transition employment period for employees employed by the terminated contractor or its subcontractors.
- (f) **Non-Discrimination in Contracts:** Companies that wish to bid for contracts with the state of California or to renew existing contracts to provide good or services of \$100,000 or more in a fiscal year to the state have to certify that they do not discriminate in the provision of benefits between married spouses and registered domestic partners. Similar requirements apply to contracts with the cities of San Francisco, Los Angeles, Oakland, Berkeley and the County of San Mateo. A few narrow exceptions apply.

Tyreen Torner, Esq.

415.364.5559

ttorner@foxrothschild.com