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SAN FRANCISCO PAID PARENTAL LEAVE ORDINANCE TAKES EFFECT; NEW RULES, POSTER ISSUED

On Jan. 1, 2017, San Francisco's landmark Paid Parental Leave Ordinance (PPLO) went into effect for employers with 50 or more employees. It will be phased in for smaller employers on July 1, 2017 (35+) and Jan. 1, 2018 (20+). The PPLO requires employers to pay "Supplemental Compensation" to make up the difference between a covered employee's_regular wages and the partial wage-replacement benefits provided under California's Paid Family Leave (PFL) program, administered by the Employment Development Department (EDD), when the employee takes leave to bond with a new child.

The San Francisco Office of Labor Standards Enforcement (OLSE) recently released rules clarifying Supplemental Compensation obligations, along with a new workplace poster, employee request form, and calculation instructions. Here's an overview of the Supplemental Compensation requirement and the new OLSE guidance.

Supplemental Compensation Basics

Supplemental Compensation is equal to the difference between the employee's regular gross weekly wages and the California PFL benefit. The employee will receive 100% of his or her weekly salary for up to six weeks, subject to a maximum weekly benefit. **For 2017, the PFL benefit is 55% of the employee's weekly gross wages up to a maximum weekly benefit of $1,173, and the maximum weekly Supplemental Compensation paid by an employer is $960**. It is important to note that while an employee can collect PFL benefits for a range of family care leave reasons, Supplemental Compensation is only required where the employee is receiving PFL benefits for new child bonding.

The PPLO allows employers to require employees to use up to two weeks of accrued vacation to help satisfy the employer's obligation to pay Supplemental Compensation during the leave period. This would be counted toward the employer's total six-week obligation to provide Supplemental Compensation. The employer also can require the employee to use two weeks of vacation prior to the employee's initial receipt of PFL benefits, although this would not offset any Supplemental Compensation. Also, the PPLO specifies that an employer is not required to pay Supplemental Compensation if it has an existing policy that provides employees with at least six weeks of fully paid parental leave for new child

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bonding within any 12-month period, whether or not the paid leave includes California PFL benefits.

Preconditions to Receiving Supplemental Compensation

The new rules issued by the OLSE set forth detailed "preconditions" that an employee must fully satisfy in order to receive Supplemental Compensation, as follows:

1. *Employee must submit Paid Parental Leave (PPL) Form to Employer*. The employee must submit to the employer a fully completed and signed PPL Form (see below for more information), within a "reasonable time" following the employee's receipt of the Notice of Computation (Form DE429D) from the California Employment Development Department (EDD). The EDD issues the Notice of Computation when the employee applies for California PFL; the notice sets out the weekly benefit amount the employee can expect to receive.
2. *Employee must notify employer of PFL benefit amounts and receipt*. The new rules give employees two "Options" to notify the employer that the employee is actually receiving PFL benefits. Once the employee satisfies either of these Options, the employer must pay the Supplemental Compensation (see below for more details on timing). While an employee only has to satisfy one of the Options, the OLSE recommends that employees complete both Options to speed up the Supplemental Compensation process.

   Option 1. This involves two steps, and is the OLSE's recommended Option:
   1. The employee must provide the employer with a copy of the Notice of Computation from the EDD as soon as it is received; *and*
   2. the employee must notify the employer as soon as s/he receives the first PFL payment. The employer can accept this notice by phone call or other method, or can require the employee to submit a copy of the EDD Notice of Payment so long as the employer has provided the employee with written notice that this will be required (note that the new rules do not specify when or how this notice must be provided).

   Option 2. This involves three steps:
   1. The employee gives the EDD permission to share the employee's PFL weekly benefit amount, by checking the appropriate box on the EDD's PFL claim form;
   2. the employee must check the appropriate box on the new PPL Form indicating that the employee is selecting Option 2, and then must notify the employer upon receipt of the first PFL payment from the EDD; *and*
   3. once the employer receives notice from the employee that Option 2 is being utilized, the employer must contact the EDD "as soon as

reasonably practicable" to obtain the weekly benefit amount; the employer must make this contact, as the EDD will not otherwise provide the employer with the benefit information.

The OLSE notes that it does not recommend Option 2, as there could be a delay in the EDD's response to the employer's inquiry, and the employer has no obligation to pay Supplemental Compensation until it has the benefit information from the EDD. If the employer does not receive a response from the EDD within seven days, the OLSE says that the employer should notify the employee of the delay and allow the employee the opportunity to utilize Option 1 instead.

Timing of Supplemental Compensation

Once an employee satisfies the preconditions for receiving Supplemental Compensation (submitting the PPL Form and completing Option 1 and/or Option 2), the employer must begin paying Supplemental Compensation. It is important to note that because employees have 49 days after their leave period begins to apply for California PFL benefits, in many cases there will be a lag between receipt of PFL benefits and payment of Supplemental Compensation; in fact, in some cases the employee may not satisfy all of the preconditions until after the PFL period ends.

The OLSE rules provide the following guidance on the timing of Supplemental Compensation payments:

- *If an employee satisfies all preconditions prior to or during their California PFL period*: In this case, the employer must make a "good faith effort" to make the first Supplemental Compensation payment on the payday for the next full pay period following the employee's satisfaction of the preconditions. Subsequent payments should be on the employer's regular pay schedule. In no case may the employer pay the total Supplemental Compensation amount later than 30 days after the last day of the employee's PFL period.
- *If the employee satisfies all preconditions after their California PFL period*: The employer must pay the total Supplemental Compensation no later than 30 days after the employee satisfies the preconditions.

Calculating Supplemental Compensation

The OLSE has published step-by-step instruction forms and worksheets for calculating Supplemental Compensation payments. The instructions can be downloaded here. Note that there are four different sets of instructions, which vary based on whether the employee has one employer or multiple employers, and whether the employee receives and reports gratuities/tips.

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Notice to Employees

The OLSE's new rules specify an employer's notice obligations under the PPLO, as follows:

- *Poster.* Employers must post a PPLO poster in the workplace. It must be posted in any language spoken by more than 5% of the employer's workforce. The poster is available **here**, and should be printed on 8.5 x 14" paper.
- *PPL Form.* Employers must provide employees with a copy of the new Paid Parental Leave Form (PPL Form) within a "reasonable time" after the employee tells the employer that s/he is expecting a newborn, adopted or foster child, or sooner if the employee asks about parental leave. Employers also are "encouraged" to provide this form to new hires and all current employees. The PPL Form is available **here**.
- *Handbooks.* Employers must include a description of Supplemental Compensation rights in employee handbook policies addressing personal or parental leave. Employers are not required to specially update their handbooks to include this provision, but must include it in the next edition of any handbook published after *Dec. 23, 2016* (in other words, if you are updating your handbook for 2017, be certain to include a PPLO provision).

Other Rules

The OLSE rules also provide guidance on a number of other issues under the new PPLO, including multiple employer situations, employer size/coverage, calculating Supplemental Compensation for employees who receive tips, intermittent leave issues, and employer appeals from a violation determination.

Action Steps

Employers with employees who work in San Francisco should immediately implement policies and procedures to ensure compliance with the PPLO and the new rules. This should include updating parental leave policies, posting the new workplace notice, distributing the new PPL form when an employee requests bonding leave, and ensuring proper calculation and timing of Supplement Compensation payments. For more background on the PPLO, see our prior **Alert**. The PPLO (and technical amendment), rules, poster, and new forms are available on the OLSE's website.

*Under the PPLO, a covered employee entitled to Supplemental Compensation is an employee: 1) who began employment with the covered employer at least 180 days prior to the start of the leave period; 2) who performs at least eight hours of work per week for the employer in San Francisco; 3) at least 40% of whose total weekly hours worked for the employer are in San Francisco; and 4) who is eligible to receive paid family leave compensation under the California Paid Family Leave law for the purpose of bonding with a new child.