

FILE NO.

LEGISLATIVE DIGEST

(April 5, 2016)

[Police Code - Paid Parental Leave for Bonding With New Child]

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Existing Law

No City law requires employers to provide paid parental leave for bonding with a new child. Under the “California Paid Family Leave” program, employees who contribute to the California State Disability Insurance (SDI) fund are entitled to six weeks of partial (55%) pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or new foster child. The 55% wage replacement is funded by employee payroll contributions.

Amendments to Current Law

General Requirement

The proposed ordinance would, as of January 1, 2017, require San Francisco employers with 50 or more employees to provide partial wage replacement to employees taking leave to bond with a new child under the California Paid Family Leave program. It would require such employers to provide the remaining portion (45%) of the employee’s normal gross weekly wage (“Supplemental Compensation”) during the six-week leave period. On July 1, 2017, the ordinance’s partial wage replacement requirement would expand to employers with 35 or more employees, and on January 1, 2018, to employers with 20 or more employees.

Coverage

A “Covered Employee” entitled to Supplemental Compensation under this ordinance is an employee (1) who commenced 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 within the geographic boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of the City, 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.

Commencing with January 1, 2017, a “Covered Employer” under the ordinance is an employer with 50 or more employees, regardless of location. Starting on July 1, 2017, a “Covered Employer” would include employers with 35 or more employees, and on January 1, 2018, would include employers with 20 or more employees. All governmental entities, including the City and County of San Francisco, are exempt from the ordinance.

Supplemental Compensation Amount

During the leave period, Covered Employers would be required to provide Supplemental Compensation in an amount such that the California Paid Family Leave compensation plus the Supplemental Compensation equals but does not exceed 100% of the employee's gross weekly wage. Based on the current 55% wage replacement rate under State law, the ordinance would require employers to pay the remaining 45% of the employee's weekly wages during the leave period. If the State wage replacement rate were to change, the employer's Supplemental Compensation obligation would change accordingly. For example, if the State wage replacement rate increased to 75%, the employer's Supplemental Compensation rate would drop to 25%.

In cases where an employee has multiple Covered Employers, the Supplemental Compensation amount would be apportioned between or among the Employers based on the percentage of the employee's total gross weekly wages received from each employer. In cases where an employee works for a Covered Employer and a non-Covered Employer, the Covered Employer would be responsible only for its percentage of the employee's total gross weekly wages.

Maximum Weekly Benefit Limitation

The California Paid Family Leave program places a cap on the 55% weekly benefit amount for higher-earning workers. As of January 1, 2016, the State's "maximum weekly benefit amount" is \$1,129, which represents 55% of a person's weekly wages based on an annual salary of approximately \$106,740. Employees who earn more than \$106,740 per year therefore do not receive the full 55% of their salary under the State program.

An employer's Supplemental Contribution obligation under the ordinance would be proportionally capped by reference to the State maximum weekly benefit amount. Using the 2016 State rates, an employer's maximum weekly Supplemental Compensation amount under the ordinance would be \$924 per week. The State's maximum weekly benefit amount (\$1,129) is 55% of \$2,053; 45% of \$2,053 is \$924.

Use of Unused, Accrued Vacation Leave

To be eligible to receive Supplemental Compensation under the ordinance, an employee must agree to allow the employer (if the employer so chooses) to use up to two weeks of the employee's unused, accrued vacation leave to help satisfy the employer's obligation to pay Supplemental Compensation during the leave period.

Parenthetically, the California Paid Family Leave program allows an employer to require an employee to use up to two weeks of unused, accrued vacation as a precondition to the employee's initial receipt of Paid Family Leave. If the employer exercises that option under

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State law, the employee must first take two weeks of vacation before starting the six-week family leave period, resulting in a total of eight weeks of leave. The ordinance would not prevent an employer from exercising that option, but would provide another option for the employer in addition to, or in lieu of, the State option, depending upon the amount of unused vacation leave that the employee in question has accrued.

Reimbursement

As a precondition of receiving Supplemental Compensation under the ordinance, an employee must sign a form agreeing to reimburse the full amount of Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily separates from employment within 90 days of the end of the employee's leave period and if the Employer requests such reimbursement in writing.

Reducing Employee Wages or Termination of Employee

- Reducing an employee's wages during the leave period or within 90 days of the employee's requesting or applying for California Paid Family Leave would give rise to a rebuttable presumption that it was done for purposes of reducing the amount of Supplemental Compensation required under the ordinance. The presumption could be rebutted by clear and convincing evidence that the wage reduction was done solely for another reason.
- Terminating an employee within 90 days of the employee's requesting or applying for California Paid Family Leave would give rise to a rebuttable presumption that it was done for purposes of avoiding the employer's Supplemental Compensation obligation under this ordinance. The presumption could be rebutted by clear and convincing evidence that the termination was done solely for another reason.
- If an employer terminates an employee during the leave period, the employer would be required to pay Supplemental Compensation for the remainder of the leave period.

Collective Bargaining Agreements

The requirements of this ordinance shall not apply to employees covered by a bona fide collective bargaining agreement ("CBA") if such requirements are expressly waived in the CBA in clear and unambiguous terms. In addition, the ordinance shall not apply to CBAs entered into before the effective date of the ordinance, but only until the CBA is extended or expires.

Administrative Enforcement Provisions

The Office of Labor Standards Enforcement ("OLSE") would implement and enforce the ordinance, including the following:

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- **Workplace Notice:** Employers would be required to post a notice in the workplace informing employees of their rights under the ordinance.
- **Employer Records:** Employers would be required to retain records pertaining to the payment of Supplemental Compensation for a period of three years and make records available to OLSE on request.
- **Anti-Retaliation:** Employers would be prohibited from retaliating against employees for exercising their rights under the ordinance.
- **Penalties:** After a due process hearing, OLSE may order any appropriate relief including payment of Supplemental Compensation and monetary penalties.

Civil Enforcement

The City, or any person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in court against an employer for violating the ordinance at any time.

No person aggrieved by a violation of this ordinance, or any entity a member of which is aggrieved by a violation of this ordinance, may file a civil action for violation of this ordinance without first giving the City 90-days advance written notice. No such aggrieved person or entity may bring a civil action under this ordinance if, during the aforementioned 90-day period, the City brings a civil action alleging a violation, or OLSE informs the person or entity in writing that (1) it intends to initiate administrative enforcement for a violation of the ordinance or (2) it has determined that no violation occurred.

Operative Date: The ordinance would become operative on January 1, 2017.

Background Information

Many workers, particularly low-wage workers, cannot afford to take parental leave at only 55% wage replacement. This ordinance is intended to supplement California Paid Family Leave by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee's weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern over loss of income does not preclude parents in San Francisco from bonding with their new child.

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 4 **compensation to employees who are receiving State Paid Family Leave for purposes of**
 5 **bonding with a new child.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 9 **Board amendment additions** are in double-underlined Arial font.
 10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 11 **Asterisks (* * * *)** indicate the omission of unchanged Code
 12 subsections or parts of tables.

10

11 Be it ordained by the People of the City and County of San Francisco:

12

13 Section 1. The Police Code is hereby amended by adding Article 33H, consisting of
 14 Sections 3300H.1 through 3300H.14, to read as follows:

15

ARTICLE 33H: PAID PARENTAL LEAVE

16

SEC. 3300H.1. TITLE.

17

This Article 33H shall be known as the “Paid Parental Leave Ordinance.”

18

SEC. 3300H.2. FINDINGS.

19

20 *(a) In 2004, California became the first state in the United States to create a family leave*
 21 *insurance program (referred to herein as “California Paid Family Leave”) that provides partial wage*
 22 *replacement to eligible employees on leave for family caregiving or bonding with a new child. Under*
 23 *the program, codified at Unemployment Insurance Code Section 3300 et seq., employees who*
 24 *contribute to the California State Disability Insurance (SDI) fund are entitled to six weeks of partial*
 25 *pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or*
new foster child, or to care for a seriously ill family member.

1 (b) As of January 2016, workers eligible for California Paid Family Leave can take up to six
2 weeks of paid time off at 55% of their weekly wages up to a maximum weekly benefit amount to bond
3 with a new child or care for a seriously ill family member. The weekly benefit amount is determined by
4 using the employee’s highest-earning calendar quarter during an approximately 12-month base period.
5 As of January 2016, the maximum weekly benefit amount is \$1,129. To qualify for this maximum
6 weekly benefit amount, an individual must earn at least \$26,070.92 in a calendar quarter during the
7 base period. The Legislature is considering legislation that would extend the number of weeks of paid
8 time off and increase the weekly benefit amount, but as of the enactment of this Article 33H, the state
9 legislation had not been passed.

10 (c) California Paid Family Leave is available to nearly all private sector workers who pay into
11 the SDI program, either through payroll deductions or voluntarily.

12 (d) Through 2014, approximately 1.8 million California Paid Family Leave claims were
13 approved by the State of California Employment Development Department (“EDD”) for a total of \$4.6
14 billion in payments. According to EDD, approximately 90% of claims are for bonding with a new
15 child.

16 (e) Babies whose mothers work during the first three months of the baby’s life are less likely to
17 be breastfed, taken to the doctor for well-baby visits, or be up to-date on immunizations. According to
18 a 2015 study, rates of breastfeeding through infancy in California increased by 10-20 percentage
19 points after development of the California Paid Family Leave program.

20 (f) Experts have found that it takes at least several months for a pattern of interaction to begin
21 to develop between parent and child where they recognize and learn to respond to each other’s distinct
22 cues. Short-changing this time for parents to learn to be responsive caregivers may have impacts for
23 children's cognitive as well as social and emotional development.

24 (g) A 2012 survey by the U.S. Department of Labor found that the main reason employees in
25 the United States do not take unpaid leave under the federal Family Medical Leave Act is that they

1 cannot afford to take it. Further, studies show that low-wage workers in particular would benefit from
2 expanded paid family leave policies.

3 (h) According to a 2014 report by the California Senate Office of Research, the number of
4 California Paid Family Leave claims filed by individuals in the lowest income bracket consistently is
5 much smaller than the number filed by those in the highest income bracket, and claims in the two
6 lowest income brackets decreased gradually over the prior nine years. Numerous factors may
7 contribute to this declining participation rate, including the current California Paid Family Leave
8 wage-replacement rate of 55%, which may provide insufficient income, particularly for low-income
9 households.

10 (i) This Article 33H is intended to supplement the California Paid Family Leave partial wage
11 replacement by providing compensation that, in combination with the California Paid Family Leave
12 payment, will total 100% of an employee's weekly salary, subject to a weekly maximum benefit amount,
13 during the six-week leave period, to help ensure that concern over loss of income does not preclude
14 parents in San Francisco from bonding with their new child.

15 **SEC. 3300H.3. DEFINITIONS.**

16 For purposes of this Article 33H, the following definitions apply:

17 "Agency" means the Office of Labor Standards Enforcement or any successor department or
18 office.

19 "California Paid Family Leave" means the State of California's partial wage replacement
20 insurance plan for paid family leave codified at California Unemployment Insurance Code, Division 1,
21 Part 2, Chapter 7 (commencing with Section 3300), as that law may be amended from time to time with
22 respect to eligibility for, duration of, or amount of paid family leave compensation, or any other matter
23 pertaining to paid family leave under that law.

24 "City" means the City and County of San Francisco.

1 “Covered Employee” means any person, including but not limited to part-time and temporary
2 employees, who is employed by a Covered Employer (1) who commenced employment with the Covered
3 Employer at least ~~90~~ 180 days prior to the start of the leave period, (2) who performs at least eight
4 hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40%
5 of whose total weekly hours worked for the employer are within the geographic boundaries of the City,
6 and (4) who is eligible to receive paid family leave compensation from the State of California under the
7 California Paid Family Leave law for the purpose of bonding with a new child. Where a person’s
8 weekly work hours fluctuate from week to week, the Agency shall determine whether the person
9 meets the eight-hour and/or 40% threshold requirements in the preceding sentence by using
10 an average of the person’s weekly hours worked for the Covered Employer during the three monthly
11 pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately
12 preceding the start of the person’s California Paid Family Leave period. If the person was on
13 unpaid leave during any of the aforementioned pay periods, such pay period(s) shall not be
14 counted towards the average referenced in the preceding sentence; rather, the Agency shall
15 consider additional earlier corresponding pay periods for that person in order to satisfy the
16 above designated number of pay periods, but in no case shall the Agency, in calculating the
17 average, consider pay periods earlier than 26 weeks prior to the California Paid Family Leave
18 period.

19 “Covered Employer”, as of January 1, 2017, means any person, as defined in Section 18 of
20 the California Labor Code, including corporate officers or executives, who directly or indirectly or
21 through an agent or any other person, including through the services of a temporary services or
22 staffing agency or similar entity, employs or exercises control over the wages, hours, or working
23 conditions of an employee and who regularly employs ~~20-50~~ or more the following number of
24 employees, regardless of location--: (1) commencing with January 1, 2017, 50 or more
25 employees; (2) commencing with July 1, 2017, 35 or more employees; and (3) commencing

1 with January 1, 2018, 20 or more employees. Covered Employer, as of July 1, 2017, means
2 any person, as defined in Section 18 of the California Labor Code, including corporate officers
3 or executives, who directly or indirectly or through an agent or any other person, including
4 through the services of a temporary services or staffing agency or similar entity, employs or
5 exercises control over the wages, hours, or working conditions of an employee and who
6 regularly employs 20 or more employees, regardless of location. Covered Employer shall not
7 include the City or any other governmental entity.

8 “New Child Bonding” means bonding with the Covered Employee’s minor child during the first
9 year after the birth of the child or after placement of the child with the Covered Employee through
10 foster care or adoption, per Section 3301 of the California Unemployment Insurance Code.

11 “State” means the State of California, including the State of California Employment
12 Development Department.

13 “Supplemental Compensation” means a Covered Employer’s obligation to pay a Covered
14 Employee’s partial weekly salary in accordance with Section 3300H.4.

15 **SEC. 3300H.4. SUPPLEMENTAL PAID PARENTAL LEAVE.**

16 (a) Applicability. This Article 33H applies to Covered Employees who are receiving California
17 Paid Family Leave benefits for the purpose of New Child Bonding.

18 **(b) Supplemental Compensation.**

19 **(1) General.**

20 (A) Except as stated in subsection (b)(2), when a Covered Employee receives
21 California Paid Family Leave compensation for the purpose of New Child Bonding, a Covered
22 Employer shall, during the leave period, supplement the California Paid Family Leave weekly benefit
23 amount that the employee is receiving by paying the employee Supplemental Compensation in an
24 amount such that the total of the California Paid Family Leave compensation the employee is receiving
25

1 and the Supplemental Compensation provides, but does not exceed, 100% of the employee's current
2 normal gross weekly wage.

3 (B) If the Covered Employee's weekly wage fluctuates, the employee's normal
4 gross weekly wage shall be calculated based on an average of the employee's weekly earnings from the
5 Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or
6 12 weekly pay periods immediately preceding the start of the employee's California Paid Family
7 Leave period. If the employee was on unpaid leave during any of the aforementioned pay
8 periods, such pay period(s) shall not be counted towards the average referenced in the
9 preceding sentence; rather, the average shall be calculated using additional earlier
10 corresponding pay periods in order to satisfy the above designated number of pay periods,
11 but in no case shall pay periods earlier than 26 weeks prior to the California Paid Family
12 Leave period be considered.; ~~provided, however, that Notwithstanding the preceding~~
13 ~~sentence, if the Covered Employee's weekly wage fluctuates and the employee has worked for the~~
14 ~~Covered Employer for less than 26 weeks, the weekly wage shall be calculated based on an average of~~
15 ~~the employee's weekly earnings for the entire period of employment to date.~~

16 (C) If the California Paid Family Leave weekly benefit amount that the Covered
17 Employee is receiving from the State is based on earnings from a calendar quarter during which the
18 employee did not work for the Covered Employer, or during which the employee earned a higher
19 weekly wage from the Covered Employer than the employee is receiving at the time of his or her leave,
20 the Supplemental Compensation amount shall be calculated to provide 100% of the employee's normal
21 gross weekly wage in his or her current position; provided, however, that reducing a Covered
22 Employee's wages during the leave period or within 90 days of the employee's having made a request
23 or application for California Paid Family Leave shall raise a rebuttable presumption that such wage
24 reduction was made to reduce the Covered Employer's Supplemental Compensation obligations under
25 this Section 3300H.4. Unless the Covered Employer rebuts the presumption with clear and convincing

1 evidence that the reduction was solely for a reason other than reducing its obligation to pay
2 Supplemental Compensation, the employer shall be obligated to pay Supplemental Compensation
3 during the leave period based on the employee's prior wage rate.

4 (D) Multiple Employers.

5 (i) Where the Covered Employee works for more than one employer, the
6 Supplemental Compensation amount shall be apportioned between or among the Covered Employers
7 based on the percentage of the Employee's total gross weekly wages received from each employer. For
8 example, if the Employee earns \$800 per week from Covered Employer A, and \$200 per week from
9 Covered Employer B for a combined total of \$1,000, Employer A shall pay 80% of the Supplemental
10 Compensation amount and Employer B shall pay 20% of the Supplemental Compensation amount. If
11 the Employee's weekly wage for a given Employer fluctuates, the percentage referenced in this
12 subsection shall be calculated by averaging the employee's weekly wages earned from the Employer
13 during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay
14 periods immediately preceding the leave period. If the employee was on unpaid leave during any
15 of the aforementioned pay periods, such pay period(s) shall not be counted towards the
16 average referenced in the preceding sentence; rather, the average shall be calculated using
17 additional earlier corresponding pay periods in order to satisfy the above designated number
18 of pay periods, but in no case shall pay periods earlier than 26 weeks prior to the California
19 Paid Family Leave period be considered.

20 (ii) In cases where the Covered Employee works for a Covered Employer
21 and a non-Covered Employer, the Covered Employer shall be responsible only for its percentage of the
22 Employee's total gross weekly wages. For example, if the Employee earns \$800 per week from the
23 Covered Employer, and \$200 per week from the non-Covered Employer for a combined total of \$1,000,
24 the Covered Employer shall pay 80% of the Supplemental Compensation amount and the Non-Covered
25

1 Employer shall pay nothing. Accordingly, in such cases, the Employee will not receive 100% of the
2 Supplemental Compensation amount.

3 (iii) In cases of multiple employers, the Covered Employee shall, as a
4 precondition of receiving Supplemental Compensation, provide the Covered Employer(s) with both (1)
5 a copy of the employee's Notice of Computation of California Paid Family Leave Benefits from the
6 State or other legally authorized statement, and (2) information pertaining to wages received from all
7 employers during the 90 days prior to the leave period on a form prepared by the Agency and signed by
8 the employee under penalty of perjury. A Covered Employee's failure to comply with this requirement
9 shall relieve the Covered Employer(s) of their obligation to provide the employee with Supplemental
10 Compensation.

11 (2) **Maximum Weekly Benefit Amount.** In the case of a Covered Employee who is
12 receiving the maximum weekly benefit amount under the California Paid Family Leave law, the
13 Supplemental Compensation shall not be calculated to reach 100% of the employee's total normal
14 gross weekly wage. Rather, the amount of Supplemental Compensation shall be calculated based on
15 the gross wage that is derived from dividing the State's maximum weekly benefit amount by the
16 percentage rate of wage replacement provided under the California Paid Family Leave law.

17 (3) **Termination During Leave Period.** A Covered Employer's obligation to provide
18 Supplemental Compensation under this Section 3300H.4 applies only during the period the Covered
19 Employee is eligible for and is receiving California Paid Family Leave benefits for New Child
20 Bonding; provided, however, that if a Covered Employer terminates a Covered Employee during the
21 leave period, the employer's obligation to pay Supplemental Compensation shall continue for the
22 remainder of the California Paid Family Leave period.

23 (4) **Termination Prior to Leave Period.** Terminating a Covered Employee prior to the
24 employee's leave period but within 90 days of the employee's having made a request or application for
25 California Paid Family Leave shall raise a rebuttable presumption that such termination was taken to

1 avoid the Covered Employer's Supplemental Compensation obligations under this Section 3300H.4.
2 Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the
3 termination was solely for a reason other than avoidance of its obligation to pay Supplemental
4 Compensation, the employer shall be obligated to pay the terminated employee Supplemental
5 Compensation during the leave period.

6 (5) **Unused Vacation Leave.** To be eligible to receive Supplemental Compensation
7 under this Section 3300H.4, a Covered Employee must ~~consent~~ agree to allowing a Covered
8 Employer, in the employer's discretion, to apply up to two weeks of unused vacation leave that the
9 employee has accrued as of the start of the leave period to help meet the employer's obligation under
10 this Section to provide Supplemental Compensation during the leave period. If the Covered
11 Employee does not agree, the Covered Employer is not required to provide Supplemental
12 Compensation under this Section 3300H.4, but such lack of agreement shall have no effect on
13 the Employee's eligibility for California Paid Family Leave benefits or other benefits under the
14 law. The preceding sentence shall not prevent a Covered Employer, in the employer's discretion, from
15 requiring a Covered Employee to take up to two weeks of earned but unused vacation leave prior to the
16 employee's initial receipt of California Paid Family Leave compensation as allowed under subsection
17 (c) of Section 3303.1 of the California Unemployment Insurance Code, as amended, in addition to or in
18 lieu of exercising the option provided in the foregoing sentence.

19 (6) **Voluntary Plans.** A Covered Employer who has received State approval to pay
20 California Paid Family Leave compensation through a voluntary disability insurance plan in
21 accordance with California Unemployment Insurance Code, Division 1, Part 2, Chapter 6
22 (commencing with Section 3251) must comply with the Supplemental Compensation requirements of
23 this Section 3300H.4 either by providing the Supplemental Compensation through the approved
24 voluntary plan or by paying Supplemental Compensation directly to the Covered Employee.

1 (c) **Integration/Coordination of Benefits.** In accordance with California Unemployment
2 Insurance Code Section 2656, a Covered Employee who is receiving California Paid Family Leave
3 benefits may not receive Supplemental Compensation under this Article 33H which would result in the
4 employee's receiving total compensation while on paid parental leave that is greater than the
5 employee's normal gross weekly wages. As a precondition of receiving Supplemental Compensation, a
6 Covered Employee must either (1) provide the Covered Employer with a copy of the employee's Notice
7 of Computation of California Paid Family Leave Benefits from the State or other legally authorized
8 statement, or (2) provide the State with written authorization to disclose the weekly benefit amount to
9 the employer. A Covered Employee's failure to comply with this requirement shall relieve the Covered
10 Employer of its obligation to provide the employee with Supplemental Compensation.

11 (d) **Existing Paid Parental Leave Policies.** This Article 33H does not require a Covered
12 Employer to provide Supplemental Compensation under Section 3300H.4 to a Covered Employee if the
13 employer's existing policy provides the employee with at least six weeks fully paid parental leave within
14 any twelve-month period for purposes of New Child Bonding, whether or not such paid leave includes
15 California Paid Family Leave benefits. Unless the Employee elects otherwise, the six weeks fully paid
16 parental leave referenced in the prior sentence must be provided as six consecutive weeks.

17 (e) **Reimbursement.** As a precondition of receiving Supplemental Compensation, a Covered
18 Employee must agree, by signing a form prescribed by the Agency, to reimburse the full amount of
19 Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily
20 separates from employment with the Covered Employer(s) within 90 days of the end of the Employee's
21 leave period and if the Employer requests such reimbursement in writing.

22 **SEC. 3300H.5. NOTICE AND POSTING.**

23 (a) The Agency shall, by the operative date of this Article 33H, publish and make available to
24 Covered Employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice
25 suitable for posting by employers in the workplace informing employees of their rights under this

1 Article. The Agency shall update this notice on December 1 of any year in which there is a change in
2 the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency
3 may combine the notice required herein with one or more other notices it is required to publish and
4 make available to employers under other provisions of City law.

5 (b) Every Covered Employer shall post in a conspicuous place at any workplace or job site
6 where any Covered Employee works the notice required by subsection (a). Every Covered Employer
7 shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the
8 employees at the workplace or job site.

9 **SEC. 3300H.6. EMPLOYER RECORDS.**

10 (a) Covered Employers shall retain records documenting Supplemental Compensation paid to
11 employees as required by this Article 33H, for a period of three years, and shall allow the Agency
12 access to such records, with appropriate notice and at a mutually agreeable time, to monitor
13 compliance with the requirements of this Article 33H.

14 (b) When an issue arises as to an employee's entitlement to Supplemental Compensation under
15 this Article 33H, if the Covered Employer does not maintain or retain adequate records documenting
16 Supplemental Compensation paid to the employee, or does not allow the Agency reasonable access to
17 such records, it shall be presumed that the employer has violated this Article, absent clear and
18 convincing evidence otherwise.

19 **SEC. 3300H.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

20 (a) It shall be unlawful for a Covered Employer or any other person to interfere with, restrain,
21 or deny the exercise of or the attempt to exercise, any right protected under this Article 33H.

22 (b) It shall be unlawful for a Covered Employer or any other person to discharge, threaten to
23 discharge, demote, suspend, or in any manner discriminate or take adverse action against any person
24 in retaliation for exercising rights to Supplemental Compensation protected under this Article 33H.
25 Such rights include but are not limited to the right to Supplemental Compensation pursuant to this

1 Article; the right to file a complaint or inform any person about any employer's alleged violation of this
2 Article; the right to cooperate with the Agency in its investigations of alleged violations of this Article;
3 and the right to inform any person of his or her possible rights under this Article.

4 (c) Protections of this Section 3300H.7 shall apply to any person who mistakenly but in good
5 faith alleges violations of this Article 33H.

6 (d) Taking adverse action against a person within 90 days of the person's filing a complaint
7 with the Agency or a court alleging a violation of any provision of this Article 33H; of informing any
8 person about an employer's alleged violation of this Article; of cooperating with the Agency or other
9 persons in the investigation or prosecution of any alleged violation of this Article; of opposing any
10 policy, practice, or act that is unlawful under this Article; or of informing any person of his or her
11 rights under this Article, shall raise a rebuttable presumption that such adverse action was taken in
12 retaliation for the exercise of one or more of the aforementioned rights. Unless the Covered Employer
13 rebutts the presumption with clear and convincing evidence that the adverse action was solely for a
14 reason other than retaliation, the employer shall be deemed to have violated this Section 3300H.7.

15 **SEC. 3300H.8. IMPLEMENTATION AND ENFORCEMENT.**

16 (a) **Implementation.** The Agency shall be authorized to coordinate implementation and
17 enforcement of this Article 33H and may promulgate appropriate guidelines or rules for such purposes.
18 Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be
19 relied on by employers, employees, and other persons to determine their rights and responsibilities
20 under this Article. Any guidelines or rules may establish procedures for ensuring fair, efficient, and
21 cost-effective implementation of this Article, including supplementary procedures for helping to inform
22 employees of their rights under this Article, for monitoring employer compliance with this Article, and
23 for providing administrative hearings to determine whether an employer or other person has violated
24 the requirements of this Article.

25 (b) **Administrative Enforcement.**

1 (1) The Agency is authorized to take appropriate steps to enforce this Article 33H. The
2 Agency may investigate any possible violations of this Article by an employer or other person. Where
3 the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary
4 or interim relief to mitigate the violation or maintain the status quo pending completion of a full
5 investigation or hearing.

6 (2) Where the Agency, after a hearing that affords a suspected violator due process,
7 determines that a violation has occurred, it may order any appropriate relief including, but not limited
8 to, the payment of any Supplemental Compensation unlawfully withheld, and the payment of an
9 additional sum as an administrative penalty to each employee or person whose rights under this Article
10 33H were violated. If any Supplemental Compensation was unlawfully withheld, the dollar amount of
11 Supplemental Compensation withheld from the employee multiplied by three, or \$250.00, whichever
12 amount is greater, shall be included in the administrative penalty paid to the employee. In addition, if
13 a violation of this Article resulted in other harm to the employee or any other person, or otherwise
14 violated the rights of employees or other persons, such as a failure to post the notice required by
15 Section 3300H.5, or an act of retaliation prohibited by Section 3300H.7, this administrative penalty
16 shall also include \$50.00 to each employee or person whose rights under this Article were violated for
17 each day or portion thereof that the violation occurred or continued.

18 (3) Where prompt compliance is not forthcoming, the Agency may take any appropriate
19 enforcement action to secure compliance, including initiating a civil action, except where prohibited by
20 State or Federal law, requesting that City agencies or departments revoke or suspend any registration
21 certificates, permits, or licenses held or requested by the employer or person until such time as the
22 violation is remedied. In order to compensate the City for the costs of investigating and remedying the
23 violation, the Agency may also order the violating employer or person to pay to the City a sum of not
24 more than \$50.00 for each day or portion thereof and for each employee or person as to whom the
25

1 violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the
2 costs of implementing and enforcing this Article 33H.

3 (4) An employee or other person may report to the Agency any suspected violation of
4 this Article 33H. The Agency shall encourage reporting pursuant to this subsection (b)(4) by keeping
5 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
6 information of the employee or person reporting the violation. Provided, however, that with the
7 authorization of such person, the Agency may disclose his or her name and identifying information as
8 necessary to enforce this Article or for other appropriate purposes.

9 (5) The Agency shall not proceed with administrative enforcement under this
10 subsection 3300H.8(b) during the pendency of a civil action brought under subsection
11 3300H.8(c).

12 (c) Civil Enforcement.

13 (1) ~~The Agency, the City, Attorney, any person aggrieved by a violation of this~~
14 ~~Article 33H, any entity a member of which is aggrieved by a violation of this Article, or any~~
15 ~~other person or entity acting on behalf of the public as provided for under applicable State law, may~~
16 ~~bring a civil action in a court of competent jurisdiction against the employer or other person violating~~
17 ~~this Article and, at any time.~~

18 (2) No person aggrieved by a violation of this Article 33H, or any entity a
19 member of which is aggrieved by a violation of this Article, may bring a civil action in a court of
20 competent jurisdiction against a Covered Employer or other person violating this Article
21 without first serving a written notice to the Agency and the City Attorney of intent to bring an
22 action, including a statement of the grounds for believing one or more violations have
23 occurred. No aggrieved person or entity may bring a civil action under this subsection
24 3300H.8(c)(2) if, within 90 days after service of the notice, the City brings a civil action
25 alleging a violation or the Agency informs the person or entity in writing that (A) it has found

1 probable cause to believe a violation has occurred and it intends to initiate administrative
2 enforcement under subsection 3300H.8(b), or (B) it has determined that no violation occurred.
3 If the City fails to file suit and the Agency fails to provide written notice within the
4 aforementioned 90-day period, the person or entity may bring a civil action for violation of this
5 Article. The statute of limitations for filing a civil action under this subsection 3300H.8(c)(2)
6 shall be tolled during the aforementioned 90-day period.

7 (3) ~~Upon prevailing, any party that has brought a civil action under this~~
8 subsection 3300H.8(c) shall be entitled to such legal or equitable relief as may be appropriate to
9 remedy the violation including, but not limited to, reinstatement, back pay, the payment of any
10 Supplemental Compensation unlawfully withheld, the payment of an additional sum as liquidated
11 damages in the amount of \$50.00 to each employee or person whose rights under this Article were
12 violated for each day or portion thereof that the violation occurred or continued, plus, where the
13 Covered Employer has unlawfully withheld Supplemental Compensation to a Covered Employee, the
14 dollar amount of Supplemental Compensation withheld from the employee multiplied by three; or
15 \$250.00, whichever amount is greater; and/or injunctive relief; and, further, shall be awarded
16 reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this
17 Article on behalf of the public as provided for under applicable State law shall, upon prevailing, be
18 entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

19 (d) **Interest.** In any administrative or civil action brought under this Article 33H, the Agency or
20 court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
21 specified in subdivision (b) of Section 3289 of the California Civil Code.

22 (e) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Article
23 33H are cumulative.

24 **SEC. 3300H.9. WAIVER THROUGH COLLECTIVE BARGAINING.**
25

1 All or any portion of the applicable requirements of this Article 33H shall not apply to
2 employees covered by a bona fide collective bargaining agreement if (1) such requirements are
3 expressly waived in the collective bargaining agreement in clear and unambiguous terms, or (2) the
4 agreement was entered into before the effective date of the ordinance enacting this Article 33H, on file
5 with the Clerk of the Board of Supervisors in File No. _____ . The exception designated (2) in the
6 preceding sentence shall not apply to any such agreement once it has been ~~amended or extended~~, or
7 has expired.

8 **SEC. 3300H.10. OTHER LEGAL REQUIREMENTS.**

9 (a) This Article 33H provides minimum requirements pertaining to paid parental leave as
10 provided herein. This Article shall not be construed to preempt, limit, or otherwise affect the
11 applicability of any other law, regulation, requirement, policy, or standard that provides for greater
12 parental leave, whether paid or unpaid, or that extends other protections to employees.

13 (b) This Article 33H provides minimum requirements pertaining to paid parental leave and
14 shall not be construed to prevent employers from adopting or retaining leave policies that are more
15 generous than policies that comply with this Article.

16 (c) This Article 33H is intended to supplement other available sources of income during
17 specified periods of leave to which the employee is otherwise eligible. Nothing in this Article shall be
18 construed to expand, reduce, or otherwise affect the total amount of parental or other leave time
19 available to employees under federal, state, or local law.

20 **SEC. 3300H.11. UNDERTAKING FOR THE GENERAL WELFARE.**

21 In enacting and implementing this Article 33H, the City is assuming an undertaking only to
22 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
23 obligation for breach of which it is liable in money damages to any person who claims that such breach
24 proximately caused injury.

25 **SEC. 3300H.12. SEVERABILITY.**

1 If any section, subsection, sentence, clause, phrase, or word of this Article 33H, or any
2 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
3 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
4 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
5 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
6 declared invalid or unconstitutional without regard to whether any other portion of this Article or
7 application thereof would be subsequently declared invalid or unconstitutional.

8 **SEC. 3300H.13. NO CONFLICT WITH FEDERAL OR STATE LAW.**

9 Nothing in this Article 33H shall be interpreted or applied so as to create any requirement,
10 power, or duty in conflict with any federal or state law.

11 **SEC. 3300H.14. EXPIRATION OF ARTICLE.**

12 This Article 33H shall expire by operation of law if the Legislature amends the California Paid
13 Family Leave program such that the benefits provided under that program amount to 100% of an
14 eligible employee's wages, as capped by any maximum benefit amount under the State law. Upon
15 certification from the City Attorney to the Clerk of the Board of Supervisors that such a change in State
16 law has occurred, the City Attorney shall cause the Article to be removed from the Police Code.

17 **SEC. 3300H.15. CHANGE IN FEDERAL LAW.**

18 Within 90 days of final enactment of any federal law requiring private employers to
19 provide paid parental leave to employees or providing governmentally funded paid parental
20 leave, the Controller shall provide a report to the Board of Supervisors analyzing the impact of
21 the newly adopted federal law on employers and employees subject to this Article 33H, as
22 well as any overlap between the federal benefits and benefits required under this Article 33H.
23 In the report, the Controller may, in his or her discretion, recommend changes to this Article
24 33H.

1 Section 2. By June 1, 2016, the Controller and the Office of Labor Standards
2 Enforcement shall provide to the Board of Supervisors a report including (1) an estimate of the
3 cost of compliance with Article 33H of the Police Code for nonprofit organizations that
4 currently have contracts with the City, and (2) policy or budget options that would enable the
5 City to subsidize these costs through the annual budget.

6
7 Section 23. Effective and Operative Dates.

8 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
9 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
10 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
11 Supervisors overrides the Mayor’s veto of the ordinance.

12 (b) Operative Date. This ordinance shall become operative on January 1, 2017.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 FRANCESCA GESSNER
18 Deputy City Attorney

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