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San Francisco aligns paid parental leave law with state family leave

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San Francisco's paid parental leave [ordinance](#) (PPLO) requires employers to supplement [California paid family leave](#) (PFL) benefits so employees on parental leave receive full pay, subject to an annual cap. The PPLO benefit rate and duration hinge on the state plan's terms. A recent change to the California program will affect San Francisco's PPLO requirements and its impact on employers. For all claims with effective dates on or after July 1, 2020, a 2019 state law (Ch. 24, [SB 83](#)) expands the maximum PFL duration from six to eight weeks to bond with a new child or care for a family member with a serious health condition. Due to this change in PFL benefits, the number of required weeks of supplemental pay under the PPLO also increases from six to eight weeks. The city has [amended the ordinance](#) to reflect the change.

PPLO overview

Enacted in 2016, the PPLO took effect in 2017. These FAQs address key provisions about the ordinance's employer requirements, including the 2020 updates.

Q. Which employers must comply with PPLO?

A. The PPLO applies to nongovernmental employers with 20 or more employees and at least one working in San Francisco, including part-time, seasonal and temporary employees, regardless of where they work. When counting employees, the calculation must include all employees — even those working outside San Francisco — within a controlled group, as defined in Internal Revenue Code [Section 1563\(a\)](#).

Q. Who are the covered employees?

A. The PPLO covers employees, including part-time and temporary staff, who work in San Francisco at least 40% of their total weekly hours and at least eight hours per week. An employee must have worked for the employer for 180 days and must be eligible for partial wage replacement under the PFL program to bond with a new child. Special eligibility rules apply to employees who have fluctuating weekly hours or have been on unpaid leave.

Q. How is PFL wage replacement calculated?

A. State PFL benefits are determined using an employee's base period, which generally covers the first four of the previous five full calendar quarters worked before the leave begins. The benefit equals 60% or 70% of earnings in the highest-paid quarter in the base period divided by 13, depending on whether those earnings (after rounding cents to the higher dollar amount) are above or below 1/3 of the state's average quarterly rate.

An individual who makes less than \$929 in the highest-paid quarter of the base period will qualify for a \$50 weekly benefit, the state minimum. Someone who makes more than \$929 but less than one-third of the state's average weekly wage (SAWW) will qualify for 70% of earnings in the highest-paid quarter of the base period divided by 13. California's 2020 average weekly wage is \$1,325. One-third of that for the 13-week quarter equals \$5,742, calculated as $(\$1,325 \times 13) \div 3$.

Example. Richard earns \$20,000 per year. He qualifies for PFL to bond with his new child. All quarters in Richard's base period equal \$5,000. Because Richard earns less than one-third of the average weekly wage in the highest-paid quarter of his base period, he qualifies for a 70% weekly benefit of \$270, calculated as $(\$5,000 \times 70\%) \div 13 = \270 .

For employees with wages at or above the SAWW, the weekly benefit will be the greater of 23.3% of the SAWW or the individual's highest wages in a quarter during the base period multiplied by 60% and divided by 13, capped at the maximum weekly benefit — \$1,300 for 2020. The maximum PFL benefit is set annually by the [Employment Development Department](#) (EDD). California's 2020 SAWW is \$1,325, and 23.3% of that amount equals \$309.

Example. Joan earns \$52,000 per year and qualifies for PFL. Her highest quarterly wage in the base period was \$13,000. This amount divided by 13 and multiplied by 60% is \$600, which exceeds \$309 (23.3% of state's average weekly wage). As a result, Joan's weekly benefit is \$600.

Example. Fred earns \$24,000. His highest quarterly earnings of \$6,000 divided by 13 and multiplied by 60% equals \$277, less than the benefit determined using 23.3% of the state's average weekly wage. As a result, Fred will receive the higher weekly benefit of \$309.

Q. How is the PPLO wage supplement determined?

A. The city ordinance requires employers to compensate covered employees the difference between the PFL benefit and up to 100% of their *current* weekly wages — not the base-period wages used to calculate the PFL benefit. The PPLO website provides [calculation assistance](#) for all of the following scenarios.

Example. Fred from the previous example qualifies for weekly PFL benefits of \$309. However, Fred has received a raise to \$20,800 annually in the past quarter. As a result, his current weekly wage equals \$400. Fred's supplemental weekly wage from his employer during parental leave amounts to \$91 ($\$400 - \309).

Wage fluctuations. If an employee's weekly wages fluctuate, calculation of supplemental compensation uses the employee's average weekly earnings during the three months before the start of the leave. For employees on unpaid leave during those months, employers may use weekly wages in periods up to 26 weeks before the bonding leave to determine the three-month average. When an individual works for multiple employers, each covered employer pays a prorated share of supplemental compensation.

PPLO maximum benefit. PPLO supplemental compensation for employees receiving the maximum PFL benefit (\$1,300 in 2020) is the difference between (i) the PFL maximum weekly benefit and (ii) the PFL maximum benefit divided by the PFL wage-replacement percentage. Because the maximum generally applies to higher earners, the rate will generally be 60%. In 2020, the maximum PPLO amount divided by the PFL wage-replacement percentage is \$2,167 ($\$1,300 \div 60\%$)

Example. Ted has a regular pay rate of \$2,400 per week, or \$31,200 quarterly, qualifying for a 60% benefit. He takes PFL to bond with his new child. Since 60% of his highest quarterly earnings during his base period divided by 13 — ($\$31,200 \div 13$) x 60% — comes to \$1,440, his weekly PFL benefit is capped at the maximum of \$1,300.

If his employer had to compensate Ted the difference between his PFL benefit and his full weekly wages, he would receive supplemental pay of \$1,100 ($\$2,400 - \$1,300 = \$1,100$). Instead, the employer must only pay the difference between Ted's weekly PFL benefit and the maximum benefit divided by 60%: So Ted's PPLO supplemental compensation is \$867 per week ($\$2,167 - \$1,300 = \867).

Tips included in pay. Benefit calculations under PFL include tips, but the PPLO doesn't require supplemental compensation for tips not paid by the employer. The PPLO rules provide an example of a special calculation to determine the appropriate supplement for tipped employees. However, nothing in the ordinance or the rules requires the employer to use this calculation as long as the employee won't be supplemented at a lower rate than the example yields. To determine the supplement excluding the tip:

1. Determine the difference between normal weekly wages (including tips) and the PFL benefit.

2. Calculate the percentage of normal weekly wages (including tip) the employer pays (excluding tip).
3. Multiply the difference by the percentage of the employer's pay share.

Example. Brooke usually earns \$500 per week, including tips, or \$6,500 quarterly. Her PFL benefit equals \$300 (60% of the highest quarter earnings — \$6,500 — divided by 13), leaving a difference of \$200. Brooke's employer pays her \$400 weekly, 80% of her total usual earnings with tips. The supplemental benefit is \$160 (\$200 x 80%). The employer doesn't have to use this formula and may supplement the entire \$200.

Q. How does the claim process work?

A. Employees have two options for claiming PPLO benefits from their employer. Regulators "strongly recommend" employees use both options.

Option 1. Under this option, the employee provides the employer the "notice of computation" issued by the state agency that administers the PFL program, EDD, as soon as the form is received. The employee must then notify the employer when the PFL benefit is received. Employers may require the state's notice of payment within a "reasonable period of time" or may rely on the employee's statement in a phone call, email or other communication.

Option 2. The second option requires more follow-up by both the employee and the employer. Employees completing a PFL application with EDD must give the agency permission to disclose benefit information to the employer and must notify the employer that permission has been granted. After receiving payment from EDD, the employee must tell the employer to contact the agency to obtain the weekly benefit amount. This process may cause additional delays.

Timing of payment. Due to the need to first have a PFL claim processed before qualifying for PPLO, the employee may not meet all conditions for PPLO benefits until after the leave has ended. Once all conditions have been met, employers must make a "good faith" effort to make the first supplemental payment on the payday for the next full pay period. Payments should continue on each regular payday until benefits are exhausted. All payments are due to the employee within 30 days of the later of the date the parental leave ends or the employee satisfies all PPLO conditions.

Q. What are the notice obligations

A. Both employers and employees have notice obligations under the law.

Employer notice. Employers must conspicuously display a PPLO poster published by the Office of Labor Standards Enforcement (OLSE) and include a description of the program and employees' rights in any employee handbook. An employee must receive a San Francisco PPLO form within a reasonable time

after notifying the employer of an impending birth, adoption or foster care placement. Employers are "encouraged" to distribute the forms to each new employee at the time of hire.

Employee notice. Employees wishing to receive supplemental PPLO compensation must submit to their employer a completed, signed San Francisco PPLO form agreeing to reimburse supplemental coverage in full if (i) the employee voluntarily terminates employment within 90 days after PFL ends, and (ii) the employer requests reimbursement in writing. The form must be submitted within a reasonable period after the employee receives a notice of computation from the PFL program.

Q. How does intermittent leave apply

A. PFL may be taken in eight consecutive weeks or intermittently in separate increments over a 12-month period. For example, an employee may choose to take eight weeks of leave in two-week increments spanning four months. San Francisco employees who intend to take intermittent leave must notify their employer about their intended intermittent leave schedule. Some intermittent leave may span an employee's 180-day waiting period for eligibility, or the employee may change work locations or reduce hours to the point he or she no longer qualifies for the PPLO benefits.

180-day PPLO waiting period. Employees taking intermittent parental leave before becoming eligible for PPLO won't qualify for the supplemental benefit during that period. Once an employee has been employed for 180 days, the supplement begins at the start of the next leave increment but is only available for the balance of the total eight-week leave.

Example. Margo takes two weeks of parental leave starting 100 days after she begins work. After she's been with the company for 180 days, she takes four more weeks of leave. Margo is not entitled to supplemental PPLO compensation for the first two weeks of leave, which she took before being employed with her employer for 180 days. She is entitled to supplemental compensation for the four weeks of leave she took after passing the 180-day mark.

Hours worked. Employees taking intermittent leave run the risk of losing eligibility if their hours worked in San Francisco drop below the weekly eight-hour/40% thresholds required for eligibility. Employers may stop paying supplemental compensation to employees beginning with the increment of leave that follows the loss of eligibility.

Example. Jimmy has a fluctuating work schedule that changes week to week. He takes his first increment of PFL bonding leave for two weeks in July 2020 and a second increment for six weeks in February 2021. In the 12 weekly pay periods before the start of his July leave, Jimmy worked an average 50% of his hours in San Francisco. But during the 12 weekly pay periods before the February increment of leave, he only worked an average of 20% of his hours in San Francisco. Jimmy's employer doesn't have to pay the supplemental compensation for Jimmy's February's PFL.

Q. What are the penalties for noncompliance?

A. The ordinance authorizes OLSE to pursue enforcement through a hearing process, with possible injunctive relief. Penalties for noncompliance include payment of any PPLO shortfall multiplied by three, or \$250.00, whichever is more, plus unspecified administrative penalties, as well as \$50 per day per violation for notice failures or any form of retaliation to employees or others beyond the PPLO shortfall. The OLSE can also seek revocation or suspension of any registration certificates, permits, or licenses held or requested by the employer until the violation is remedied. Employees may bring a private civil action if city regulators take no action within 90 days of receiving notice of a possible violation.

The regulations provide an administrative appeal process employers may follow. Any appeal must be in writing, provide specified information and include payment of the full penalty assessed by regulators within 15 days of the initial determination of a violation. The appealing employer bears the burden of proving that the basis for finding a violation is incorrect.

Employers' existing paid parental leave programs

Many employers that already offer paid parental leave may be unsure how aspects of the ordinance coordinate with their programs. The following Q&As may help with compliance efforts.

Q. Do any exemptions apply to employers that already offer paid parental leave?

A. The PPLO exempts employers that offer at least eight weeks of fully paid parental leave (beginning July 1, 2020) during a 12-month period for new child bonding. This exemption applies even if the employer's paid leave program offsets PFL benefits.

Q. An employer offers four weeks of paid leave to bond with a new child. Does that mean the employer needs to provide another eight weeks of supplemental pay if the employee subsequently files for PFL to bond with a child?

A. Providing four weeks of fully paid leave is not enough to meet the exemption. The employer would need to provide another four weeks of supplemental PPLO benefits on top of what the company already provides. After the employee receives the initial four paid weeks, the employer must provide four additional weeks of supplemental PPLO benefits during the remaining eight weeks of PFL.

Q. An employer provides 12 weeks of paid maternity leave for employees giving birth. Does this satisfy the PPLO requirement?

A. No. If the employee who gives birth uses more than four weeks of her 12-week leave for disability, the employer will need to supplement any additional weeks taken under PFL for new child bonding. Even if

the employer provides paid maternity leave that meets the PPLO requirement, the employer must still satisfy the PPLO for other all new parents who qualify for PFL, not just the birth mothers.

Q. An employer offers eight weeks of fully paid bonding leave but requires employees to take this leave in a single consecutive period, not intermittently. Does this comply with the PPLO?

A. Maybe. An April 2020 amendment to the law says that PPLO leave must be provided as consecutive weeks "unless the employee elects otherwise." This language implies the employee must have the opportunity to elect intermittent leave. Employers with these programs may want to revisit eligibility and terms for San Francisco employees.

Q. An employer offers eight weeks of fully paid bonding leave to all new parents but does not coordinate this leave with PFL. If an employee working in San Francisco takes those eight weeks and then takes another eight weeks of PFL, does the employer need to supplement the PFL?

A. No, the employer has met its PPLO obligation by providing eight weeks of fully paid bonding leave to all new parents.

Q. An employer offers a 12-week fully paid bonding benefit for primary caregivers and four-week fully paid bonding benefit for nonprimary caregivers. Does this comply?

A. This satisfies the mandate only for the primary caregiver. The nonprimary caregiver should have his or her wage supplemented for the additional four weeks, whether taken consecutively or intermittently.

Q. An employer's salary continuation program supplements an employee's California disability benefits up to 100% of wages for six weeks after a child's birth. Does this satisfy the PPLO?

A. No, the fully paid leave must be for parental bonding, not disability, and must extend to all new parents, not just birth mothers.

Q. An employer provides eight weeks of fully paid parental leave. Can the employer require the employee to file for PFL to receive this employer pay?

A. The employer is free to design its program this way. However, unless the employer plan pays as a supplement to the PFL, employees will need to report their full pay and will receive no additional PFL if their annual eight-week allotment has been exhausted.

Q. An employer wants to simplify administration by paying 30% or 40% of an employee's wages while on PFL, without further calculation. Will this comply?

A. No. PFL benefits are calculated using a base period, and the supplemental pay required by the PPLO is based on pre-leave wages that won't necessarily match the base wages. The employer must provide

supplemental compensation in the amount of the difference between the employee's normal weekly wage and the PFL benefit amount, up to a cap.

Consider next steps

Given the changes to the duration of leave and intermittent availability, employers may want to evaluate how existing parental leave programs coordinate with PPLO, and decide on any plan changes needed. Employers that don't provide paid family leave other than what's required under PPLO will need to reassess cost implications going forward.

Related resources

Non-Mercer resources

- [PPL ordinance](#) (San Francisco Municipal Code)
- [PFL website](#) (CA EDD)
- [PPL website](#) (San Francisco Municipal Code)
- [2019 Ch. 24](#) (CA Legislature, June 27, 2019)
- [Amended PPL ordinance](#) (OLSE, March 24, 2020)
- [Employment Development Department](#) (CA government)

Mercer Law & Policy resources

- [2020 state paid family and medical leave contributions and benefits](#) (Feb. 14, 2020)

Other Mercer resources

- [Life, absence & disability](#)

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