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SAN FRANCISCO PASSES LANDMARK PARENTAL LEAVE ORDINANCE AS CALIFORNIA STRENGTHENS ITS PAID FAMILY LEAVE LAW

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By Tom Geidt

The City and County of San Francisco – the first jurisdiction in the U.S. to mandate paid sick leave for employee and family member illnesses in 2007 – will now be the first to require that employers in the private sector provide paid time off so that parents can bond with their newborn or newly adopted children.

On April 5, 2016, the San Francisco Board of Supervisors passed the “Paid Parental Leave Ordinance,” which will require employers with 20 or more employees to supplement California’s existing Paid Family Leave benefits by paying up to six weeks of partial wage replacement for child bonding time. After the ordinance is officially enacted in the next month or so – which is considered a virtual certainty – its paid leave requirements will become operative on January 1, 2017.

Under the Parental Leave Ordinance, whenever employees apply for and receive California Paid Family Leave benefits for baby bonding time, covered employers will be required to provide “Supplemental Compensation” for up to six weeks in an amount which, when added to the Paid Family Leave benefit, equals but does not exceed 100% of the employee’s gross weekly wages.

Coincidentally, this week Governor Brown signed an amendment to the Paid Family Leave Law (A.B. 908), which will expand benefits on a state-wide basis to employees who take time off from work for baby bonding or to care for a family member who has a serious illness. Once this amendment goes into effect in 2018, it will have the effect of reducing the amount of Supplemental Compensation that San Francisco employers must pay under the Parental Leave Ordinance.

Background: The Paid Family Leave Law

Since 2004, California’s Paid Family Leave Law, found at Unemployment Insurance Code section 3300, has allowed employees throughout California to apply with the State’s Employment Development Department for partial wage replacement – currently up to 55% of their weekly wages up to a specified cap – for up to six weeks of time away from work for child bonding time or to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner. These payments are funded through employee payroll deductions, much like the State Disability Insurance system for employees who incur non-work-related injuries or illnesses.

The new amendments to the Paid Family Leave Law, which will take effect on January 1, 2018, will increase the State benefits to either 60% or 70% of an employee’s weekly wages, depending on the employee’s pay level, subject to a weekly cap that is adjusted each year. The 2016 cap is \$1,129 per week. The amended Paid Family Leave Law will also eliminate the current one-week

waiting period before an employee can receive PFL benefits.

Highlights of the San Francisco Ordinance

San Francisco's Parental Leave Ordinance is due to take effect on January 1, 2017, for employers with 50 or more employees, *regardless of location*. It will take effect on July 1, 2017 for employers with 35 to 49 employees, and on January 1, 2018 for employers with 20 to 34 employees.

To be eligible for Supplemental Compensation for parental leave, (1) employees must be employed with the employer for at least 180 days prior to the start of the leave period; (2) they must work at least eight hours per week for that employer in San Francisco, on average; (3) at least 40% of their total weekly hours worked for that employer, on average, must occur within San Francisco; and (4) they must be eligible for California Paid Family Leave benefits. The leave for child bonding must occur during the first year after the birth of the child or after placement of the child with the employee through foster care or adoption.

If an employee works for two or more covered employers in San Francisco, the Supplemental Compensation amount will be apportioned between the employers based on the percentage of the employee's total gross weekly wages received from each employer.

As a condition to receiving Supplemental Compensation under the ordinance, employees must sign a State form agreeing to reimburse the full amount of the Supplemental Compensation, upon request of the employer, if they voluntarily separate from employment within 90 days after the end of their leave period. If an employer terminates an employee during the six-week leave period, it must continue paying the Supplemental Compensation through the end of the leave period.

The Parental Leave Ordinance does not apply to employees who are covered by a bona fide collective bargaining agreement if the requirements of the ordinance are expressly waived in the CBA in clear and unambiguous terms. In addition, the ordinance does not apply to employees covered by *any* CBA that was entered into before the effective date of the ordinance, but only until the CBA is extended or expires; after that, the ordinance will apply unless the new CBA contains an express waiver of the ordinance's requirements.

As true of most other San Francisco employment ordinances, employers covered by the Parental Leave Ordinance will be required to post a City-provided notice on its bulletin boards, maintain certain records showing its compliance with the ordinance, and strictly refrain from retaliating or discriminating against employees who exercise their rights under the ordinance. As with San Francisco's other ordinances, employers covered under the Parental Leave Ordinance will be subject to a broad array of enforcement mechanisms, penalties, and remedies in the event a violation is found.

Other Paid Leave Developments

In recent years, many cities and states have enacted paid *sick* leave laws that are modeled, to one degree or another, after San Francisco's 2007 Paid Sick Leave Ordinance. We can expect this trend to continue. So far, however, San Francisco is the only jurisdiction to mandate paid *parental* leave that is paid out of the employer's own pocket.

Several other states have enacted Paid Family Leave laws patterned after the California Paid Family Leave Law, allowing for partial wage replacement that is funded through employee payroll deductions. This includes Rhode Island, Washington, New Jersey, and the District of

Columbia. Recently, New York became the latest state to pass a similar provision. Beginning in 2018, employees in New York will be entitled to up to *12 weeks* of partially-paid leave to care for an infant or a family member with a serious health condition, or to relieve family pressures when someone is called to active military service. These benefits, too, will be funded solely through payroll deductions.

Finally, most federal contractors across the U.S. will soon be required to provide paid *sick* leave benefits to their employees who work on federal contracts entered into on or after January 1, 2017. This stems from an Executive Order issued by President Obama last September.

Under Executive Order 13706, covered contractors will be required to provide one hour of paid sick leave for every 30 hours worked on an accrual basis, or grant 56 hours of paid sick leave at the beginning of each year, for employee illnesses or family member illnesses. Paid leave may also be taken when employees are victims of sexual assault, stalking, or domestic violence (a provision modeled after the California Paid Sick Leave law). The Executive Order does not cover parental bonding leave.

The U.S. Department of Labor published proposed regulations for implementing the Executive Order in February, and the deadline for members of the public to comment on the regulations expired this week. We expect the DOL to issue its final regulations within the next few months.

If you have any questions about any of these developments, please contact us.

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