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San Francisco Paid Parental Leave Ordinance

On April 21, 2016, the San Francisco Board of Supervisors passed the Paid Parental Leave for Bonding with New Child Ordinance (PPLO). The law requires employers who have employees working in San Francisco to provide supplemental compensation to employees who are receiving California Paid Family Leave for purposes of bonding with a new child. The PPLO is phased in based on employer size.

- Employers with 50 or more employees must comply beginning January 1, 2017.
- Employers with 35-49 employees must comply beginning July 1, 2017.
- Employers with 20-34 employees must comply beginning January 1, 2018.
- Employers with fewer than 20 employees are exempt.

■ Background

The California Paid Family Leave program (CPFL) provides eligible employees with up to 55% of their weekly wages for up to six weeks to bond with a newborn, newly adopted, or foster child. The CPFL benefit is administered by the Employment Development Department and funded by

payroll taxes on employees. The PPLO will provide benefits to employees that are receiving CPFL so that the employee will receive up to 100% of their weekly wages, subject to a maximum amount and based on a calculation described below.

■ Covered Employers

An Employer is covered under the PPLO if the employer “regularly employs” the required threshold number of employees listed above. The employee count must include all employees regardless of their status or classification as seasonal, permanent or temporary, full or part time, contracted, leased, commissioned, or any other employee category. This is a very expansive definition and differs from other definitions of employee from the Internal Revenue Code, Affordable Care Act, or other laws. The count must include all employees on paid or unpaid leave, including protected leave, leaves of absence, disciplinary suspensions, or any other type of leave. The employee count must include all employees of the employer regardless of geographic location and whether they actually work within San Francisco.

The employee count is based on the average number of employees that are employed during the PPLO lookback period. The PPLO lookback period is the 12 weekly pay periods (or other pay period equivalent such as six biweekly pay periods) preceding the start of the first day of an employee's CPFL period but does not include any pay periods during which the employee was on unpaid or partially paid leave. Additionally, all employees employed within a controlled group of companies are included in the count for the employer.

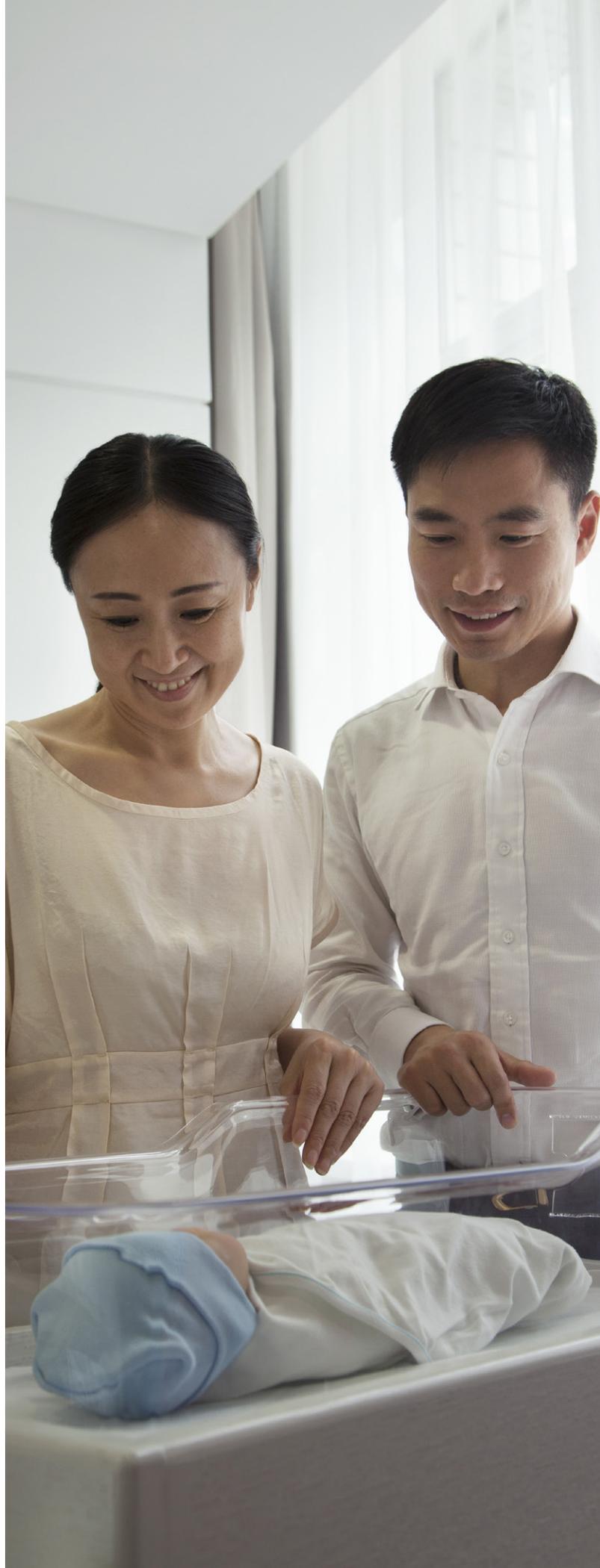
In the event that an employer becomes a covered employer during a covered employee's CPFL period (after the CPFL period has commenced), the covered employer must provide PPLO supplemental compensation only for the period after becoming a covered employer. This is especially important for intermittent leave periods.

■ Covered Employees

As defined in the PPLO, a Covered Employee is:

- Employed at least 180 days prior to the commencement of the leave period;
- Completes at least eight hours of work per week within San Francisco;
- Works in San Francisco for at least 40% of their weekly hours for the covered employer; and
- Is eligible to receive compensation under the CPFL for bonding with a new child.

If an employee is taking intermittent leave, they need to have commenced employment 180 days prior to each leave increment. Government employees are not considered covered employees. Employers are not required to but may verify that an employee is actually receiving compensation under the CPFL by requesting that the employee provide the employer with their Electronic Benefit Payment Notification (DE 2500E). The DE 2500E is also referred to as the "Notice of Payment" and is provided to the employee by the State EDD.



■ Benefit Calculation

In order to be eligible for PPLO supplemental compensation, a covered employee must be eligible to receive CPFL benefits. To be clear, employees must have actually applied for CPFL benefits and received a Notice of Computation from the EDD. An employee must then provide the Notice of Computation and the completed PPLO Form to the employer. Further, the covered employer is not required to pay PPLO supplemental compensation if the employee does not actually receive the CPFL benefits. Additionally, the PPLO Form includes a requirement that the employee agree to reimburse the covered employer for the full amount of PPLO supplemental compensation if the employee voluntarily separates from employment within 90 days of the end of the employee's CPFL period.

The PPLO supplemental compensation calculation varies based on whether the employee has more than one employer and whether the employee receives and reports tips. For a Covered Employee of a single employer that does not receive tips:

- Find the employee's CA EDD CPFL weekly benefit amount on the notice of computation or electronic benefit payment notification provided by the employee (this amount is capped at \$1,173);
- Determine the employee's current normal gross weekly wages during the PPLO lookback period (this amount is capped at \$2,133);
- Subtract the CPFL weekly benefit amount from the normal gross weekly wage;
- This is the amount of PPL supplemental compensation due per week.

An Employer may, but is not required to, apply up to two weeks of an employee's accrued, unused vacation time toward the cost of PPLO supplemental compensation. An Employer may only apply accrued, unused PTO in excess of 72 accrued hours. However, an Employer may not apply an employee's accrued, unused sick time for PPLO supplemental compensation.

On April 11, 2016, legislation was signed by Governor Brown to increase the benefits paid by the CPFL program. Benefits will increase from the current 55% to either 60% or 70% of an employee's average weekly wage changing the employer's contribution from the current 45% to either 40% or 30%.

■ Employer Action

Employers must post the required notice in all worksites and are encouraged to provide a copy of the PPL Form to all current and new employees. Additionally, if a Covered Employer publishes an employee handbook that describes available types of leave, then they are required to include a description of employee rights under the PPLO in the next edition of their handbook. Employers must provide the PPL Form in any language that is spoken by 5% or more of the employees in any worksite.