



# LACTATION ACCOMMODATION IN THE WORKPLACE

Beverly Popek  
Supervising Compliance Officer



Office of Labor Standards Enforcement

# Covered Employers and Employees

## Covered Employers

All employers – except for government entities – that have employees working in San Francisco\* are covered

## Covered Employees

All employees working within the geographic boundaries of San Francisco\*, including part-time employees, are covered

- \*Federal Enclaves (i.e. The Presidio or Fort Mason) and the San Francisco International Airport are not considered San Francisco



# Legislative History

- The purpose of the ordinance “is to provide a supportive work environment to enable employees who are nursing mothers to breastfeed or express breast milk during work hours”
- Complements State and Federal law
  - Amended the San Francisco Police and San Francisco Building Codes



# Employer Requirements

## Lactation Breaks

Employers must provide a reasonable amount of break time for employees to express breast milk

- Break time shall, if possible, run concurrently with any break time already provided to the employee
- Break time that does not run concurrently with the rest time authorized under State law may be unpaid



# Employer Requirements

## Lactation Location 1/2

- Employers must provide a location for lactation, other than a bathroom, in close proximity to the employee's work area that:
  - Is shielded from view and free from intrusion
  - Is safe and clean
  - Contains a surface
  - Contains a place to sit
  - Has access to electricity
  - Is not a bathroom



# Employer Requirements

## Lactation Location 2/2

- Employers in multi-tenant buildings may use a shared location if they cannot satisfy the location requirements on their own
- Employers must provide, in close proximity\* to the employee's work area, access to a refrigerator and a sink with running water



# Definition of “Close Proximity”

It depends on the specifics of the situation, but it must be close enough that its location does not deter a reasonable employee from using it.



# Employer Requirements

## Lactation Accommodation Policy

1. Identify the process by which an employee may submit a request
2. Employer must respond within 5 business days
3. Must engage in an interactive process with employee to determine the appropriate
  - a) lactation break period(s)
  - b) location





# Denying the Request

If you deny the request, you must provide the employee a written response that identifies the basis upon which the you have denied the request.



# Exemptions 1/2

- An employer may establish an exemption from a requirement in the Ordinance to provide lactation breaks and/or a lactation space.
- Such exemptions may not be available under state law.
- **Employer must still comply with all other requirements of the Ordinance, as well as all state and federal legal requirements.**



# Exemptions 2/2

## Undue hardship exemption under the Ordinance

Significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the employer's business

Examples of an undue hardship could, in some circumstances, include:

- building a room
- undertake a construction project
- remove seating from a restaurant
- remove retail floor space



# Best Practices (1/2)

- Learn about lactation
- Watch the On-Demand Lactation Video
- Use sample policies to make your own
- Read the Rules and Regulations on our website
- Read the FAQ our website



# Best Practices (2/2)

- Distribute policy at the time of hire and/or issue a memo with a copy of the policy to current employees
- Make sure the policy is in your handbook
- Retain records
- Contact OLSE if you have any questions



# OLSE – Lactation in the Workplace

<https://sf.gov/information/lactation-workplace-ordinance>

- Legislative Text
- Frequently Asked Questions
- Sample Employer Policy & Request Form

(415) 554-6406

[lactation@sfgov.org](mailto:lactation@sfgov.org)





# **FAMILY FRIENDLY WORKPLACE ORDINANCE (FFWO)**

Beverly Popek, Supervising Compliance Officer



# Today's Presentation

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- Employee Rights
- Covered Employer
- FFWO Requirements
  - Noticing and Poster
  - FFWO Process
- Best Practices
- Resources





# Legislative History



**10 Aug. 2013**

Board of  
Supervisors  
passed FFWO



**3 Aug. 2022**

Board of  
Supervisors  
amended FFWO



**14 Mar. 2022**

Mayor signed  
amendment



**7 Dec. 2022**

Operation date  
for amendment



# Employee Rights

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The FFWO gives Covered Employees the right to a flexible or predictable working arrangement to assist with caregiving responsibilities for:

1. A child or children for whom the Employee has assumed parental responsibility
2. A person(s) with a serious health condition in a family relationship\* with the caregiver.
3. *A person who* is age 65 or older and in a family relationship\* with a caregiver.

\*“Family Relationship” means a relationship in which a Caregiver is related by blood, legal custody, marriage, or domestic partnerships, as defined in San Francisco Administrative Code Chapter 62 or California Family Code Section 297, as either may be amended from time to time, to another person as a spouse, domestic partner, child parent, sibling, grandchild, or grandparent.



# Covered Employer

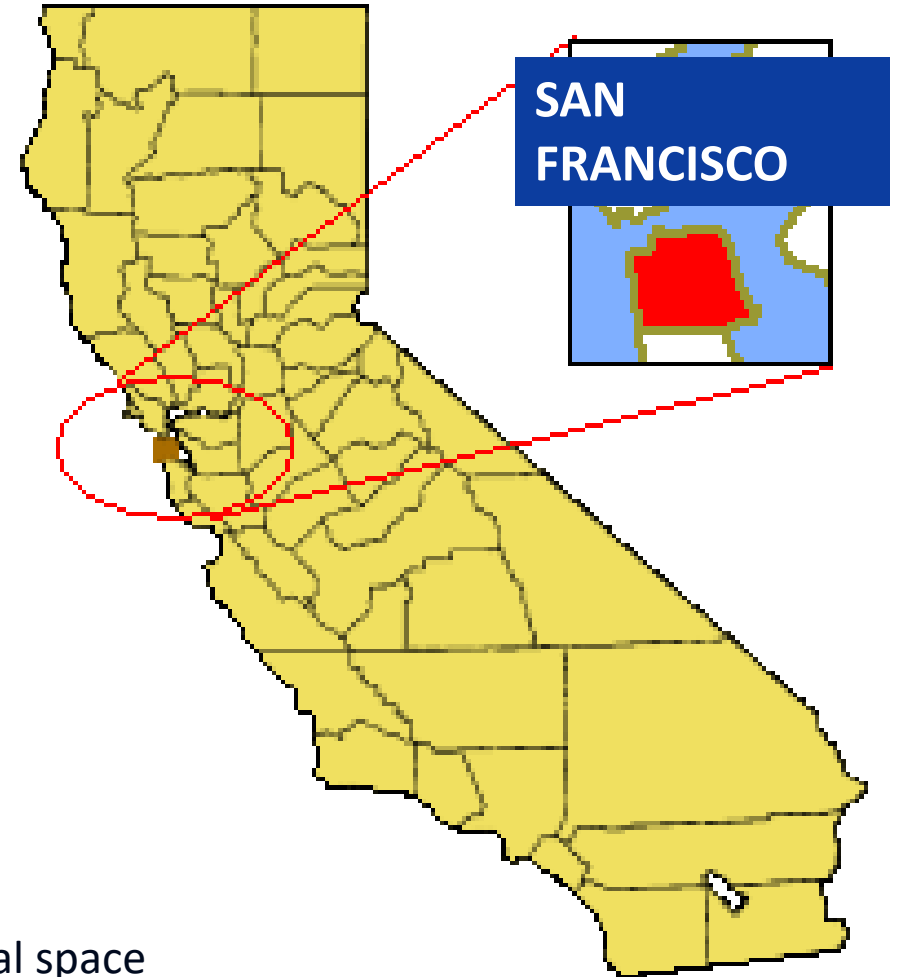


20 OR MORE EMPLOYEES  
WORLDWIDE



MUST HAVE A \*BUSINESS  
LOCATION WITHIN THE  
GEOGRAPHIC BOUNDARIES  
OF THE CITY AND COUNTY OF  
SAN FRANCISCO

\*A business location is any physical space  
used for the business to run its operations.



# Covered Employee

1. Works at least 8 hours per week within the geographic boundaries of San Francisco, with those boundaries extending to telework if Employee is assigned to the San Francisco business location.
2. Has been employed by Covered Employer for 6 months or more.



# What about Employees who telework?

An Employee is covered by the FFWO if they are assigned to a San Francisco Business location at the time the request is made regardless of where they are physically working. An Employee is NOT covered by FFWO if they were never assigned to the San Francisco office.

See Rule 2.3: When determining where a remote Employee is assigned for purposes of the FFWO, an Employer should consider factors including, but not limited to, the location of the Employee's computer, manager, teammates or co-workers, personnel file, where the Employee worked prior to beginning Telework, and/or Employee's proximity to the business location.



# What does the FFWO Require the Employer to do? (1/3)

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1. Upon receiving a completed written request, review to determine if you can provide the Employee with the flexible or predictable work arrangement to assist in caring for their children, family members with serious health conditions, or family member 65 or older as requested.



# What does the FFWO Require the Employer to do? (2/3)

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2. If you do not agree to the request, engage in a good faith interactive process to determine a mutually-agreeable arrangement.





# What does the FFWO Require the Employer to do? (3/3)

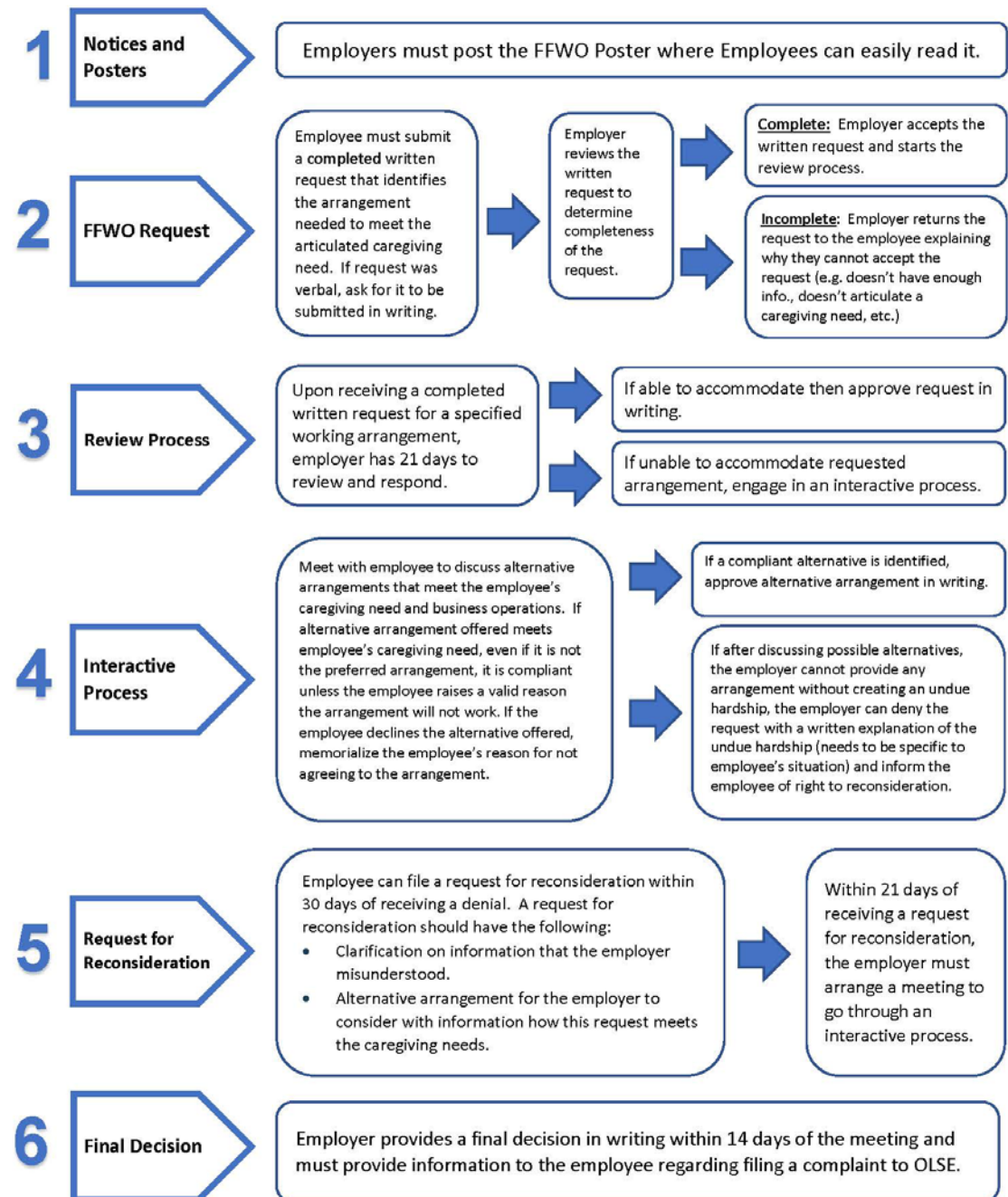
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3. If after considering alternative arrangements, still unable to accommodate the request, notify the Employee in writing, explaining the undue hardship determination and the Employee's right to request reconsideration and file a complaint with OLSE.





# FFWO Process Chart Found on FFWO Webpage



# 1- Notices & Posters (1/2)

## Rule 11- Post the Official FFWO Notice/Poster

1. Printable version on FFWO Webpage (English, Spanish, Chinese, & Filipino/Tagalog)
  - <https://www.sf.gov/information/family-friendly-workplace-ordinance>
  - If the language spoken by 5% or more of the workforce is a language other than those listed, the Employer shall be responsible for translating the form and providing it to the workforce.



# 1- Notices & Posters (2/2)

2. Employer must provide the Employees with the FFWO request form or the comparable form within a reasonable time after the Employee inquired about the FFWO accommodation.

- Sample FFWO form on FFWO Webpage
- Provide copy of FFWO form to current and new employees
- Must add policy to your Employee handbook when your handbook is updated



## 2- FFWO Request (1/3)

1. Request must be in writing. If Employee makes a verbal request, Employer must immediately direct the Employee to submit in writing.
2. Request must be for caregiving responsibilities as defined under FFWO.



## 2- FFWO Request (2/2)

3. Request must explain how the request is related to caregiving.

4. Request must be specific as to the proposed start and end dates, modified hours, days, work location, predictable hours, etc.



## 2- FFWO Request (3/3)

5. Request date should be at least 21 calendar days\* prior to the requested started date for the Flexible or Predictable Working Arrangement as Employers have 21 calendar days to issue a determination.

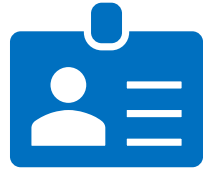
\* If requested start date of the arrangement is less than 21 days from the time of the request, Employer should make best efforts to make a timely decision, but the law affords the Employer 21 days to issue a determination.



# 3- Review Process



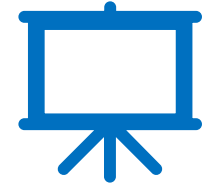
Once a completed written request is received, Employer has **21 days to respond to the Employee's request.**



Employer has the right to request verification.\*



The 21-day deadline may be extended if there is an agreement with the Employee confirmed in writing.



\*More information discussed on next slide



# Verification

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1. Employee's attestation of caregiving duties may suffice but Employer can request verification within limits.
2. The Employer **may ask** the Employee to provide a note confirming the obligation (e.g. medical appointment is on Tuesdays at 3pm).
3. The Employer **may not ask** for confirmation about the reason for the appointment or extraneous verification, such as from Employee's family members that they are unavailable to assist, when there is no basis to believe that Employee's attestation is invalid.





# Granting the Request

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If the Employer is able to accommodate the request, then approve the agreement in writing to the Employee.



This must be completed within **21 days of receiving the Employee's request.**

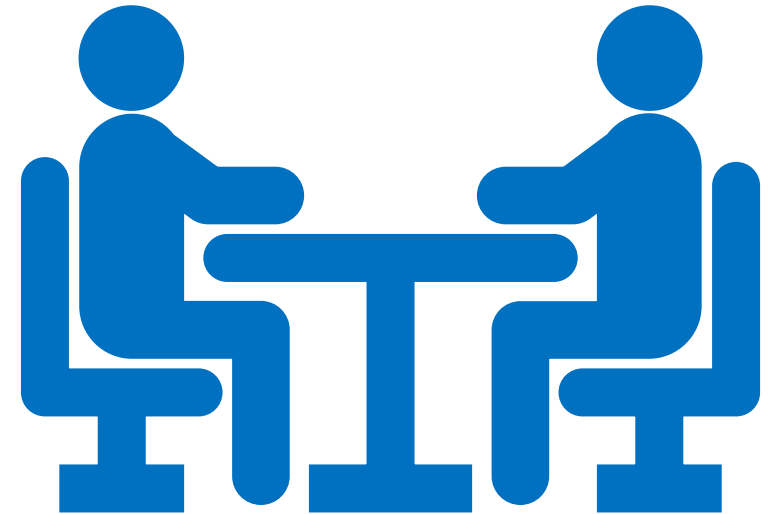


# If Employer can not accommodate the requested arrangement...

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## Engage in an interactive process

1. Both Employer and Employee must engage in an interactive process where they meet to discuss alternative arrangements that satisfy the Employee's caregiving need and do not cause undue hardship.
2. The Employer may approve an alternative arrangement that effectively meets the Employee's caregiving responsibilities.



## 4- Interactive Process (1/3)

**Must engage in an interactive process with the Employee to attempt in good faith to determine a Flexible or Predictable Working Arrangement that is acceptable to both the Employee and Employer.**

1. Interactive process - timely, good faith, discussion, either orally or in writing, between the Employer and Employee
2. Exchange essential information without delay or obstruction of the process



## 4- Interactive Process (2/3)

3. Employer should analyze the functions and purpose of the Employee's position in relation to the operations of the Employer.
4. The Employer should consider the requested arrangement, but may approve an alternative arrangement that is effective in meeting the Employee's caregiving responsibilities if that arrangement causes less impact on the operations of the business.



## 4- Interactive Process (2/3)

5. If Employer provides an alternative arrangement that would meet the caregiving needs of the employee and the employee declines, the employer is still compliant.



# If no agreement is met...

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If Employer seeks to deny the request, they must prove **undue hardship**, demonstrating the request would cause significant expense or operational difficulty.



An Employer is not required to alter or impede their business operations in a manner that would cause significant expense or operational difficulty.



# Undue Hardship Reason for Denial (1/3)



Undue Hardship - causing the Employer significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the Employer's business.



The denial must be in consideration of the most current arrangement the Employee has requested, whether it be the original request made or the alternative arrangement identified in the interactive process.



# Undue Hardship Reason for Denial (2/3)

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If an Employer asserts that it can only comply with some of the requested arrangement (e.g., the Employer can reduce hours but not allow the Employee to begin work earlier in the day) without undue hardship, it should comply with those provisions of the request and demonstrate undue hardship for the part of the request it cannot accommodate.





# Undue Hardship Reason for Denial (3/3)

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Each situation is unique and subject to an individualized analysis, and Employers should consider their circumstances in determining whether they can.



# Denying the Request

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An Employer must explain the denial in a written response containing the following:

1. Explanation of the basis for the denial and undue hardship.
2. Notification to the Employee of their rights to:
  - a) Request reconsideration by the Employer under Section 12Z.6; and
  - b) File a complaint under Section 12Z.10, including a copy of the notice under Section 12Z.8.



# 5- Request for Reconsideration

01

Worker has right to request reconsideration within 30 days after the denial.

02

Employer must meet with the Employee within 21 days to discuss and reconsider FFWO request.

03

Employer must issue a final decision in writing within 14 days of the meeting.



## 6- Final Denial

Employer provides a final decision in writing within 14 days of the meeting and must provide information to the employee regarding filing a complaint to OLSE.



# Employee May File a Complaint with OLSE

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**An Employee can file a complaint if:**

1. They received a response from the Employer.

OR

2. The time frame elapsed without receiving a response from the Employer.



# Enforcement, Penalties, & Appeal Procedures

## Rules & Regulations

1. Enforcement Procedures  
Rule 8.
2. Administrative Penalties  
Rule 10.
3. Appeals Procedures  
Rule 10.



# Best Practices (1/2)

Must engage in an interactive process with the Employee to attempt in good faith to determine a Flexible or Predictable Working Arrangement that is acceptable to both the Employee and Employer.

Interactive process - timely, good faith, discussion, either orally or in writing, between the Employer and Employee.

Feel free to meet and discuss the request with Employee but everything should be memorialized in writing.



# Best Practices (2/2)

Keep good notes, emails, analysis, calculations, etc.

Must save all documents involved in the FFWO process for at least three (3) years.

Remember that each situation is unique and subject to individualized analysis





# Resources on OLSE Website

[sfgov.org/olse](https://sfgov.org/olse)

- Video On-Demand for FFWO\*
- Poster/Notice
- Sample FFWO Request Form
- FFWO Process Chart
- Rules and Regulations
- Legislative Information

\* This VOD is a different presentation with different examples.



# Contact Us

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San Francisco, CA 94102

Phone Number: 415-554-6424

Email: [ffwo@sfgov.org](mailto:ffwo@sfgov.org)

<https://www.sf.gov/information/family-friendly-workplace-ordinance>

