City and County of San Francisco
Office of Labor Standards Enforcement

Rules Implementing
the Family Friendly Workplace Ordinance (as amended)

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Introduction

The Office of Labor Standards Enforcement ("OLSE") promulgates these proposed Rules pursuant to Article 32, Section 32.10(a)(5) of the Labor and Employment Code (L.E.C.) (formerly codified as Administrative Code Section 12Z). Pursuant to Article 32.10, the OLSE is authorized to enforce and to coordinate implementation and enforcement of the San Francisco Family Friendly Workplace Ordinance ("FFWO") and may promulgate appropriate rules and guidelines for such purposes.

The Family Friendly Workplace Ordinance requires qualifying Employers to:

1. Provide an employee with a flexible or predictable work arrangement upon request to assist in their ability to care for their children, family members with serious health conditions, or family member 65 or older unless the arrangement would cause the employer undue hardship;

2. If unable to approve the requested arrangement, engage in a good faith interactive process to determine a mutually-agreeable arrangement;

3. Demonstrate in writing the undue hardship determination and notify an employee of their right to reconsideration and right to file a complaint;

The operative date of the amended FFWO is July 12, 2022. As of the operative date, OLSE may issue determinations and impose administrative penalties.

****March 21, 2025, Update****

The City and County of San Francisco is a covered employer under the Family Friendly Workplace Ordinance (FFWO) and is, therefore, obligated to comply with the FFWO's requirements regarding predictable and flexible scheduling for covered employees. The FFWO grants OLSE the authority to take "appropriate steps" to enforce the ordinance. However, the FFWO does not create a legally enforceable right against the City in court and OLSE does not have authority to order City departments to approve employee requests.

Due to these constraints, the FFWO's established enforcement process, which OLSE administers in cases involving private employers, does not apply to City departments or their covered employees. Accordingly, OLSE will not investigate City departments for FFWO violations.

To exercise their FFWO rights, City employees should continue to submit their FFWO requests to their designated Human Resources personnel.

Definitions[1]

"Agency" or "OLSE" means the San Francisco Office of Labor Standards Enforcement.

"Caregiver" means an Employee who is a primary contributor to the ongoing care of: (1) A Child or Children for whom the Employee has assumed parental responsibility; (2) Person(s) with a Serious Health Condition in a Family Relationship with the Caregiver; or (3) A Person age 65 or older in a Family Relationship with the Caregiver.

"Child" or **"Children"** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis to that child, who is under 18 years of age.

"Employee" means any person who regularly works for an Employer at least eight hours per week within the geographic boundaries of San Francisco, including part-time Employees, provided that Telework shall be considered work within the geographic boundaries of the City.

"Employer" means the City or any person as defined in Section 18 of the California Labor Code who employs 20 or more employees, regardless of location, but does not include the state or federal government or any other local governmental entity.

"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.

"Flexible Working Arrangement" means a change in an Employee's terms and conditions of employment that provides flexibility to assist an Employee with caregiving responsibilities.

"Predictable Working Arrangement" means a change in an Employee's terms and conditions of employment that provides scheduling predictability to assist that Employee with caregiving responsibilities.

"Serious Heath Condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following: (1) Inpatient care in a hospital, hospice, or residential health care facility; or (2) Continuing treatment or continuing supervision by a health care provider.

"Telework" means an Employee's work for an Employer from the Employee's residence or other location that is not an office or worksite of the Employer if the Employer maintain an office or worksite within the geographic boundaries of the City at which the Employee may work, or prior to the COVID-19 pandemic was permitted to work.

[1] These definitions, provided here for ease of reference, mirror Section 32.3 of the FFWO.

"Work Schedule" means those days and times within a work period that an Employee is required by an Employer to perform the duties of the Employee's employment for which the Employee will receive compensation.

"FFWO" or "Ordinance" means the San Francisco Family Friendly Workplace Ordinance, codified at Article 32 of the L.E.C.

Time for Actions: Unless otherwise specified, when these Rules require performance of an act within a specified number of days, that number refers to calendar days, not business days.

Rule 1. Covered Employer

L.E.C. Art. 32, Section 32.3 Rules and Guidelines:

Background: Section 32.3 states, **"'**Employer' means the City, or any person as defined in Section 18 of the California Labor Code who regularly employs 20 or more employees, regardless of location, including an agent of that Employer and corporate officers or executives who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employ or exercise control over the wages, hours, or working conditions of an Employee. The term 'Employer' shall also include any successor in interest of an Employer. The term 'Employer' shall not include the state or federal government or any other local governmental entity other than the City."

Rule 1.1. All employees should be counted, including those inside and outside of San Francisco, regardless of their status or classification as seasonal, commissioned, permanent or temporary, or full-time or part-time.

Rule 1.2. If the number of employees fluctuates, the employer is covered if it had an average of 20 employees performing paid work per week during the preceding calendar quarter.

> For example: A business that has 5 employees during the first 6 weeks of the quarter and 20 employees during the last 7 weeks of a quarter would not be covered in the subsequent quarter because it has employed an average of only 13 persons per week during that quarter: [(5 employees/week x 6 weeks) + (20 employees/week x 7 weeks)]/13 weeks = 13 employees/week.

Rule 1.3. If an Employee submits a complete request when the Employer is qualified as a covered Employer, but before the Employer issues a determination the Employer no longer qualifies as a covered Employer (i.e., has less than 20 employees), the Employer must still consider the request for a Flexible or Predictable Work Arrangement and comply with the FFWO.

Rule 1.4. For the purposes of making a determination on an Employee's request for a Flexible or Predictable Working Arrangement and/or engaging in the interactive process as required by the FFWO, an Employer includes an Agent of the Employer authorized by the Employer to use the Agent's independent judgment to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, direct, or address grievances of Employees, or recommend those authorized actions to the Employer.

Rule 1.5. To qualify as an Employer subject to the FFWO, the Employer must maintain a physical business location within the geographic boundaries of the City.

Rule 1.6. The "City" does not include the San Francisco Unified School District, which is a government entity separate from the City.

Rule 2. Covered Employee

L.E.C. Art. 32, Sections 32.3 and 32.4 Rules and Guidelines:

Background: Section 32.3 states, **"**Caregiver" means an Employee who is a primary contributor to the ongoing care of any of the following: (1) A Child or Children for whom the Employee has assumed parental responsibility; (2) A person or persons with a Serious Health Condition in a Family Relationship with the Caregiver; or (3) A person who is age 65 or older and in a Family Relationship with a Caregiver.

Rule 2.1. For the purposes of the FFWO, a "primary contributor" means a person who is regularly and substantially engaged in providing ongoing care.

> Example: Employee shares joint custody of their child. Employee cares for their child three days per week. During those three days, the Employee is the child's Caregiver as they are the primary contributor to the ongoing care of their child.
>
> Example: About four times a year, Employee takes their uncle to a medical appointment when their cousin is not available. Employee is not a "Caregiver" pursuant to the FFWO because they are not a primary contributor to the ongoing care of their family member.

Rule 2.2. An Employee may submit a prospective request for a Flexible or Predictable Working Arrangement if the Employee knows they will assume parental responsibility within the timeframe of the request period (i.e. 86 days from the time of the initial request).

Background: Section 32.3 states, "'Employee' means any person who is employed by an Employer, who regularly works at least eight hours per week within the geographic boundaries of the City for an Employer, including part-time Employees, provided that Telework shall be considered work within the geographic boundaries of the City."

Rule 2.3. An Employee who performs duties via Telework is a covered Employee pursuant to the FFWO only if they are assigned to a San Francisco business location within the geographic boundaries of the City at the time the Employee makes the request for a Flexible or Predictable Working Arrangement. 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.

> Example: Employer has offices in San Francisco, Burlingame, and Hayward. Employee works from their home in San Mateo and if they were to work "onsite" the Employer would assign them to work in the Burlingame office. Employee is not covered by the FFWO even though they work for an Employer who has an office in San Francisco.
>
> Example: In 2019, Employee worked at the Employer's San Francisco office. In 2020,

Employee began to Telework and moved to Los Angeles. Employer has offices in California, Colorado, and New York and allows some of its employees to Telework fulltime. Employee's team is located in the San Francisco office so the Employer would consider the Employee assigned to the San Francisco office. Therefore, the Employee is covered by the FFWO. Whereas Employee's coworker who lives in Nebraska and works with a team based in Colorado, was hired in 2021 into a Telework position, and was never assigned to the San Francisco office would not be covered by the FFWO.

Background: Section 32.4 states, "Beginning on the Operative Date of Amendments, except as provided in Section 32.5, a person who has been an Employee of an Employer for six months or more shall be permitted 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 or persons with a Serious Health Condition in a Family Relationship with the Employee, or 3) a person or persons age 65 or older in a Family Relationship with the Employee."

Rule 2.4. Employees who have been employed by an Employer subject to the FFWO for six months or more, measured from calendar date in one month to the calendar date in the following month (e.g. June 7 to July 7 amounts to one month, January 31 to February 28 amounts to one month, etc.) and regularly work at least eight hours per week within the geographic boundaries of San Francisco, provided that Telework is considered work within the geographic boundaries of the City have the right to request a flexible or predictable working arrangement under the FFWO.[2]

Rule 2.5. If an employee who has been employed for more than 6 months within the geographic boundaries of the City leaves the job and is re-hired at a later date, the employee does not have to wait 6 months before making a request for a Flexible or Predictable Work Arrangement under the FFWO. The ordinance does not require that the employee work six months uninterrupted and instead only requires that the employee work for the employer within the geographic boundaries of the City a total of six months cumulatively at any time to be able to make a request.

Rule 2.6. For the purposes of the FFWO, "caregiving" is defined as the reasonable and necessary ongoing supervision or care of a child or family member for their physical and mental wellbeing.

[2] See L.E.C. Art. 32.4

Rule 3. Right to A Flexible or Predictable Work Arrangement

L.E.C. Art. 32, Section 32.4 Rules and Guidelines:

Background: Section 32.4(b) states, "An Employee shall submit to the Employer a notice of the Employee's need for a Flexible or Predictable Working Arrangement under this Section 32.4, which shall be in writing and specify the arrangement requested. The arrangement may include, but is not limited to, a change in Employee's terms and conditions of employment as they relate to the number of hours the Employee is required to work, which may include by way of example and not limitation part-time work, part-year employment, or job sharing arrangements; the Employee's work schedule, which may include modified hours, variable hours, predictable hours, or other schedule changes or flexibilities; the Employee's work location, which may include by way of example and not limitation Telework; and modifying the Employee's work assignments or duties."

Rule 3.1. The Employee shall include in the notice a proposed start date, the requested duration of the specified arrangement, the specifics of the arrangement (e.g. start time of 9am, work from home on Wednesdays, etc.), and an explanation of how the request is related to caregiving. If an Employee does not include the required information, the Employer may return the notice to the Employee with a request to include the required information and resubmit the notice.

Rule 3.2. The Employer's duty to respond in writing within 21 calendar days, pursuant to Section 32.5, does not begin until the Employee submits a completed written request pursuant to Rule 3.1 and Section 32.4(d)[3]. Employee should submit the completed written notice at least 21 calendar days prior to the requested start date for the Flexible or Predictable Working Arrangement as an Employer is afforded 21 days to respond.

Rule 3.3. A request for a Flexible or Predictable Working Arrangement differs from an Employee's scheduling request in that it must be based on their Caregiving responsibilities and meet the requirements of Section 32.4.

> Example: An Employee receives their schedule every two weeks and is required to make any scheduling requests on the Friday before the schedule is posted. On the first of the month, Employee requests not to be scheduled for the night shift on the twelfth of the month. Although the manager hears from a co-worker that Employee's request is to take his son to his dance recital, the Employee's request is not considered a notice of the Employee's need for a Flexible or Predictable Working Arrangement since he did not expressly disclose that his need is due to his caregiving responsibilities and his request was not made in a timely manner (i.e. affording the Employer 21 calendar days to respond).

[3] An Employee may announce the initial notice orally, after which the Employer shall either in writing or orally, refer the Employee to the posting required by Section 32.8 and instruct the Employee to prepare and submit a written notice under subsection (b).

Rule 4. Employer Verification

L.E.C. Art. 32, Section 32.4 (c) Rules and Guidelines:

Background: An Employer may require an Employee to attest to or verify the Employee's caregiving responsibilities prior to agreeing to a Flexible or Predictable Working Arrangement.

Rule 4.1 An Employer shall not require the Employee to disclose information that is beyond what is necessary for the Employer to determine whether the Employee's requested arrangement is valid.

> Example: Employee requests to work 7:00am to 3:30pm on Tuesdays so they can take their grandmother to a standing medical appointment that she is unable to get to without assistance. The Employer may ask the Employee to provide a note from the health care provider confirming the weekly appointment. The Employer may not ask for confirmation about the reason for the medical appointment or verifications from Employee's family members that they are unavailable to assist, when there is no basis to believe Employee's attestation is invalid.

Rule 4.2. An Employer shall treat all information obtained from Employee regarding their request for a Flexible or Predictable Arrangement in a manner consistent with applicable federal, state, and local privacy laws.

Rule 4.3 Verification policies approved through a bona fide collective bargaining agreement shall be permissible.

Rule 5. Process for Establishing a Flexible or Predictable Working Arrangement

L.E.C. Art. 32, Section 32.5 Rules and Guidelines:

Background: Section 32.5(b) states, "An employer must respond in writing within 21 days of the oral or written notice under Section 32.4."

Section 32.5 (c) states further, "Decision or Interactive Process.

(1) An Employer who agrees to the Flexible or Predictable Working Arrangement shall confirm the arrangement in writing to the Employee.

(2) An Employer who does not agree to the Flexible or Predictable Working Arrangement shall 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."

Rule 5.1. An Employer must respond in writing within 21 calendar days of the Employee making the completed request for a Flexible or Predictable Working Arrangement. If approving the requested arrangement or a mutually acceptable arrangement, the Employer's written response shall contain the following information: an express approval, the specific terms of the arrangement, and the duration of the arrangement with starting and ending dates.

Rule 5.2. If the Employer does not agree to the Employee's requested arrangement, they must initiate the interactive process. An interactive process requires a timely, good faith, discussion, either orally or in writing, between the Employer and Employee. The Employer and Employee shall exchange essential information without delay or obstruction of the process. As part of the interactive process, in consideration of the requested arrangement, the Employer should analyze the functions and purpose of the Employee's position in relation to the operations of the Employer. The Employer should consider the requested arrangement but may approve an alternative arrangement that is effective in meeting the Employee's caregiving responsibilities.

> Example: Employee requests to Telework on Wednesdays to accommodate their caregiving responsibilities. Employee can perform their duties via Telework, but Employer does not want Employee to Telework then because they have an in-person team meeting on Wednesday mornings.
>
> Employer must contact Employee in a timely manner, without unreasonable delay, to begin the interactive process. Examples of reasonable delay would be the Employee being on vacation or the Employer being at a work conference. Employer must have a conversation with Employee about alternative accommodations that would support the Employee's need to meet their caregiving responsibilities. During their discussion, Employee explains they need to be home by 3:00pm. Employer could propose that Employee work on site until 12:00pm, thereby attending the team meeting, and then Telework the remainder of the workday.

As a best practice, Employer should document their conversations with the Employee.

Rule 6. Undue Hardship

L.E.C. Art. 32, Section 32.5 Rules and Guidelines:

Background: Code Section 32.5(c)(3) states, "An Employer may deny a Flexible or Predictable Working Arrangement that would be acceptable to the Employee only if granting such an arrangement would cause the Employer undue hardship by 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. An Employer must explain the denial in a written response that sets out the basis for the denial and notifies the Employee of the right to request reconsideration by the Employer under Section 32.6 and the right to file a complaint under Section 32.10 and includes a copy of the notice under Section 32.8."

Rule 6.1 The burden of proof is on the Employer to demonstrate that an Employee's requested arrangement would impose an undue hardship.

Rule 6.2. If an Employer asserts that it will approve only 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 approve those terms of the request and demonstrate the undue hardship caused by the terms of the request.

> Example: Employee works an eight-hour shift from 9:30 am to 6:00 pm and requests a predictable schedule to begin work at 10:00 am two days per week due to childcare duties. The Employer can accommodate one of the days but not the second day. The Employer must demonstrate undue hardship to support the denial of the second day.

Rule 6.3. If after engaging in a good faith interactive process, the Employer and Employee have not found an agreeable arrangement, the Employer may deny the request if they can demonstrate that the request would cause an undue hardship. The denial must be based on undue hardship caused by the most current arrangement the Employee has requested, whether it be the original request made or the altered request that resulted from the interactive process (e.g. the Employee requested to begin work at 9:30 am but after a discussion with the Employer altered their request to 9:00 am).

Rule 6.4 An Employer is not required to alter or impede their business operations in a manner that would cause significant expense or operational difficulty. A "significant expense or operational difficulty" is an identifiable cost directly caused by the requested arrangement and the significance is assessed in relation to the Employer's size, financial resources, nature, and structure. Each situation is unique and subject to an individualized analysis, and Employers should consider their circumstances, which may include but not be limited to the terms of a bona fide collective bargaining agreement, in determining whether they can assert an undue hardship. Therefore, the analysis will differ between a restaurant employing 25 employees, a medical clinic employing 100 employees, and a computer software company employing 2000 employees.

Example: Employee works an eight-hour shift from 9:30 am to 6:00 pm as a store clerk. Employee requests a predictable schedule to begin work at 7:00 am so they can return home in time to administer medication to their 76 years old grandmother. The Employer's store is open from 10:00 am until 6:00 pm and staffs three clerks per day. Apart from preparing for opening, as a store clerk, the Employee does not perform any duties that can be accomplished when the store is closed and the requested schedule or reducing the Employee's hours will lead to insufficient coverage during store hours. The Employer is not required to change the essential duties of the Employee's position and would experience a detrimental effect on the ability to meet customer demands if the Employee's schedule request was approved.[4] Therefore, the Employer can likely demonstrate an undue hardship and deny the requested arrangement.

Example: In November, an Employee requests to work a four day-a-week, 10 hour-a-day schedule until the following August to provide care on Fridays because their child's preschool reduced operations to Monday through Thursday only. The Employer does not hold any mandatory meetings on Fridays. The Employee holds a position that is not public facing and all duties can be performed Monday through Thursday. Even though the Employer prefers everyone to work a Monday through Friday, 8 hours per day schedule, and is concerned others will also want to work this schedule, they would not likely be able to demonstrate undue hardship. However, if an Employee's requested schedule would require the Employee to miss a mandatory meeting or the Employer to pay the Employee overtime wages pursuant to the Cal. Labor Code, the request could be denied if Employer can demonstrate undue hardship due to significant productivity loss or identifiable costs directly caused by the requested arrangement.[5]

Example: Employee's regular schedule is 9:00 am to 6:00 pm. Employee requests to work from 10:30 am to 7:30 pm instead to accommodate their caregiving responsibilities. Employee's supervisor cannot work a schedule other than 9:00 am to 6:00 pm. Employer determines that Employee cannot work without supervision due to the nature of the business and/or Employee's demonstrated performance deficiencies.[6] Employer may be able to demonstrate an undue hardship based on productivity loss and deny the requested arrangement.

Example: Employee requests to work at the North Beach location instead of the Outer Sunset location of the Employer's business due to caregiving responsibilities. There is a need for staffing at the North Beach location, but Employer is concerned that other employees will also want to request a change to the North Beach location. Employer would not likely be able to demonstrate undue hardship based on their concern. Employer can use objective criteria to address multiple FFWO requests, such as seniority if multiple requests

[4] See L.E.C. Art. 32.5(3)(B) and (D)

[5] See L.E.C. Art. 32.5(3)(A)

[6] See L.E.C. Art. 32.5(3)(A)

are made at once and then if unable to arrange coverage the Employer may be able to deny an Employee's request due to undue hardship.[7]

Rule 6.5 If issuing a denial, the Employer must state in writing the reason for the denial, fully explaining why the Employer is not able to accommodate the requested arrangement. Simply stating the requested arrangement is denied is insufficient to comply with section 32.5(C)(3). The Employer must also state in writing that the Employee has a right to request reconsideration within 30 days of the denial and may file a complaint with OLSE, providing a copy or the notice published by OLSE, pursuant to Section 32.8.

[7] See L.E.C. Art. 32.5(3)(C)

Rule 7. Request for Reconsideration After Denial

L.E.C. Art. 32, Section 32.6 and 32.10 Rules and Guidelines:

Background: Code Section 32.6 (a) states, "An Employee whose Flexible or Predictable Working Arrangement has been denied may submit a request for reconsideration to the Employer in writing within 30 days of the decision." Code Section32.6 (b) states, "If an Employee submits a request for reconsideration under this Section 32.6, the Employer must arrange a meeting to discuss said request to take place within 21 days after receiving the request."

Rule 7.1. An Employee may submit a request for reconsideration in writing within 30 calendar days of the Employer's written determination. An Employer must arrange a meeting to discuss the Employee's request for reconsideration within 21 calendar days of receiving the request for reconsideration and provide a final decision in writing 14 calendar days after the meeting.

Rule 7.2 Pursuant to 32.10 (a) 4, an Employee must first submit a request for reconsideration and either wait until they receive a response from their Employer or the required timeframe for an Employer to respond has elapsed before making a complaint to OLSE regarding any suspected violation of their personal rights pursuant to the FFWO.

Rule 8. Enforcement Procedures

Establishes Procedures Pursuant Section 32.10 (a)(5)

OLSE has the authority to conduct investigations, monitor compliance, and impose penalties for violations of the FFWO. As part of this authority, OLSE may examine Employer records, conduct inspections of employment sites, speak with workers and other witnesses, conduct audits, and engage in other investigative methods as needed.

Investigation Procedure

Upon making a preliminary determination that an Employer has violated the FFWO, OLSE will send the Employer a Notice to Correct, which shall include OLSE's findings. For all alleged violations other than an allegation of retaliation, the Employer shall have 15 days to respond. If one of the alleged violations is retaliation as defined in Section 32.7, the Employer shall have 10 days to respond to all alleged violations.

The Employer may resolve the matter by remedying the situation per OLSE's direction and fully complying with the FFWO. If the Employer contests the Notice to Correct findings, the Employer's response shall explain, in detail, the reasons why the Employer believes it has not violated the provisions of the FFWO listed in the Notice to Correct. The Employer may provide supporting evidence to prove compliance. OLSE may, in its discretion, grant an Employer an extension of time to respond. Any request for an extension must be timely, in writing, and must state the reason for the requested extension.

After reviewing the Employer's response to the Notice to Correct, or if an Employer fails to respond to the Notice to Correct by the date specified, OLSE will decide whether to (1) conduct further investigation, (2) issue a Determination of Violation ("DOV"), or (3) conclude the investigation. The issuance of a DOV constitutes OLSE's final determination that an Employer has violated the FFWO.

A DOV will include: (1) a list of all FFWO provisions the Employer has violated; (2) a summary of why OLSE has concluded that the Employer has violated the specified provisions; (3) the corrective actions the Employer must take to remedy its violations; (4) the amount of the administrative penalty imposed for the violation(s) and a timeline for payment of such penalty, if applicable; and (5) the procedure for appealing the DOV and the deadline for filing the appeal.

Service

OLSE may serve Notices to Correct and DOVs in any of the following ways:

- personal service upon the Employer or legal representative;

- posting the document in a conspicuous place on the Employer's place of business or the fixed location within the City from or at which the Employer conducts business in the City;
- email, so long as the Employer has consented in writing to service by email; or
- first class mail, with postage prepaid and a declaration of service under penalty of perjury by the person mailing the document. If OLSE affects service by mail, service is effective on the postmark date.

Rule 9. Administrative Penalties

Establishes Procedures Pursuant to Section 32.10 (a)(2) and (5)

The FFWO authorizes OLSE to impose administrative penalties up to whichever amount is greater: (1) up to $50 for each day or portion thereof that the violation occurred or continued; or (2) up to the cost of care the Employee or person whose rights were violated incurred due to the violation. The Employee shall verify the cost of care upon OLSE's request and OLSE maintains the discretion to determine if the asserted cost of care is reasonable. If the cost of care claimed by the Employee exceeds what is reasonable, OLSE may calculate an amount that is reasonable for purposes of imposing administrative penalties.

The administrative penalty shall be payable to the affected worker(s) and be due within 30 days from the date of the DOV.

In order to compensate the City for the cost of investigating and remedying violations, the FFWO also provides for OLSE to impose administrative penalties up to whichever amount is greater: (1) $50 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued; or (2) up to the City's costs for the investigation and remedying the violation. Such funds shall be made payable to the City and County of San Francisco and be due within 30 days from the date of the DOV.

The failure of an Employer to pay restitution or penalties within the time specified in the DOV constitutes a debt to the City.

Actions that may be taken by OLSE and/or other City agencies to collect unpaid amounts from Employers for FFWO violations include, but are not limited to:

- a civil action;
- revocation of licenses and permits; and
- referral to state regulatory, licensing, permitting, or other collections agencies.

Rule 10. Administrative Appeal Procedures

Establishes Procedures Pursuant Section 32.10(a) (5)

Filing an Appeal

Employers receiving a DOV may file an appeal by requesting a hearing before a neutral hearing officer appointed by the Office of the Controller. The appeal must:

1. Be in writing and state the legal and factual basis for the appeal (this is a brief statement only; the parties will have the opportunity to submit full written briefs later as part of the appeals process);
2. Include a return address;
3. Include a check or bond payable to the City and County of San Francisco for the full penalty amount; and
4. Be received by the Controller's Office within fifteen (15) days from the date on the Proof of Service accompanying the DOV.

The appeal must be submitted in person, by U.S. mail, or by other delivery service such as FedEx or UPS, to:

San Francisco Office of the Controller
City Hall, Room 316
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

A copy of the appeal, including a copy of the check or bond for the penalty amount, must also submitted to OLSE in one of the following ways: in person, by email to the compliance officer listed on the DOV, by U.S. mail, or by other delivery service such as FedEx or UPS, to:

San Francisco Office of Labor Standards Enforcement
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

The Controller's Office must receive the appeal and the check or bond for the penalty amount, and OLSE must receive the copy of the appeal, on or before the day of the appeal deadline by close of business (5:00 p.m.).

The failure to file an appeal that complies with this Rule shall constitute concession to the assessment, and the DOV shall be final upon expiration of the appeal deadline.

Setting a Hearing Date

Within fifteen (15) days of receiving a properly filed appeal, or as soon thereafter as is practicable, the Controller or his or her designee shall appoint a neutral hearing officer (who shall not be employed by OLSE) to hear and decide the administrative appeal. The Controller's Office shall advise OLSE and the appellant of the appointment of the hearing officer.

The hearing officer shall promptly set a date, time, and place for a hearing on the appeal. The Controller's Office shall serve—by first class mail to the address listed on the appeal, and by email if the appellant has included an email address on the appeal—a written notice of the time and place for the hearing.

Except as otherwise provided by law, the appellant's failure to receive a properly served notice of the hearing shall not affect the validity of any proceedings under the FFWO.

Pre-Hearing Procedures

No later than ten days prior to the hearing, the parties shall submit the following documents to the hearing officer, with simultaneous service on all other parties: a statement of issues to be decided by the hearing officer, a list of all witnesses likely to be called (other than for impeachment or rebuttal), a list describing each piece of evidence to be offered at the hearing, and any other information or documents requested by the hearing officer.

If a hearing is continued to a later date, a party may request permission to submit an amended witness or exhibit list. Such requests must be made in writing and submitted to the hearing officer and all other parties at least 15 days before the new hearing date. Such requests shall not be granted unless the hearing officer determines that there is good cause to allow the party to call the new witness or submit the new evidence.

Failure to Appear

An appellant's failure to appear at the hearing shall constitute concession to the assessment in the DOV and a withdrawal of the appeal.

Evidence

A DOV shall constitute *prima facie* evidence of all violations set forth in the DOV.

Absent good cause, and other than impeachment or rebuttal witnesses, a witness who does not appear on the witness list described above may not be called at the hearing.

Absent good cause, an Employer may not present evidence at a hearing that it failed to provide to OLSE in response to a request before the issuance of a DOV.

Burden of Proof

The appellant shall have the burden of proving, by a preponderance of the evidence, that OLSE's determination of a violation is incorrect.

Hearing Record

The hearing shall be open to the public and shall be tape-recorded. Any person or entity, or OLSE, may retain a certified court reporter to record and transcribe the hearing.

Findings and Decision

The hearing officer may continue the hearing and request additional information from any party prior to issuing a written decision. The hearing officer shall make findings based on the record of the hearing and issue a written decision based on such findings within 20 days of the conclusion of the hearing. The hearing officer may affirm or reject the DOV in whole, or in part. The hearing officer may also impose conditions and/or deadlines to correct violations or pay penalties. OLSE will promptly post the hearing officer's decision on its website.

Finality of Hearing Officer's Decision

The decision of the hearing officer shall be final. The sole means of review of the hearing officer's decision shall be by filing in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of Civil Procedure. If the hearing officer concludes that the violation(s) set forth in the DOV did not occur or that the party was not the responsible party, OLSE shall refund the penalty amount to the party that deposited such amount. The hearing officer's decision shall be served on the appellant and OLSE by certified mail.

Rule 11. Noticing Procedures

L.E.C. Art. 32, Section 32.8 Rules and Guidelines:

In addition to posting the Notice required in Section 32.8, Covered Employers should provide employees with a copy of the San Francisco Family Friendly Workplace Ordinance Form (FFWO Form) or a comparable form within a reasonable time after the employee inquired about a FFWO accommodation.

Further, if the Covered Employer publishes an employee handbook that describes other kinds of accommodations available to its employees, the employer shall include a description of the right to an accommodation in the next edition of its handbook it publishes following the adoption of these Rules. Employers are also encouraged to give a copy of the FFWO Form to each current and new employee, ensure that copies are available to each current and new employee, and disseminate the FFWO Form in any other way.

Any employer whose workforce at any facility or establishment contains 5% or more of persons who speak a language other than English as their spoken language shall provide the FFWO Form in that language. The Office of Labor Standards Enforcement shall make the FFWO Form available in Spanish, Chinese, and Filipino/Tagalog. 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.