To: Honorable Mayor and Members of the City Council

From: Commission on the Status of Women and Commission on Labor

Submitted by: Emmaline Campbell, Chairperson, Commission on the Status of Women
Libby Sayre, Chairperson, Commission on Labor

Subject: Supplemental Paid Family Leave

RECOMMENDATION
Adopt the first reading of an ordinance with the following changes:
1. Add Job Protection Language to ensure workers cannot be fired for using paid family leave.
2. Include the City of Berkeley as a “covered employer” in Chapter 9.90.030 of the Ordinance.
3. Allocate financial resources for outreach, education, and enforcement of the provisions provided by Ordinance.

SUMMARY
The Commission on the Status of Women and the Commission on Labor recommend that the City adopt the draft ordinance with two changes, and recommend an allocation for outreach, education, and enforcement of the ordinance.

FISCAL IMPACTS OF RECOMMENDATION
City impacts: Unknown for outreach and education. Cost of supplemental pay to City of Berkeley employee salaries when they take family leave.

Fiscal impact to employers: none to businesses with less than 25 employees. Cost of supplemental pay to employers with over 25 employees when employees take family leave.

CURRENT SITUATION AND ITS EFFECTS
At their regular meeting on October 25, 2017, the Commission on the Status of Women adopted the following:

M/S/C: (Campbell/Khan) to recommend to City Council to adopt a Paid Family Leave Ordinance as edited by the commission.
Ayes: Krause, Midkiff, Howard, Shanoski, Khan, Rudnick, Adhikari, Campbell, Vasquez
Noes: None
Abstain: None
Absent: None

And at their regular meeting on November 15, 2017, the Commission on Labor adopted the following:

M/S/C: (Wilkinson/Frankel) to adopt the Council Report and Paid Family Leave Ordinance as amended and adopted by the Commission on the Status of Women

Ayes: Frankel, Wilkinson, Fillingim, Sayre, Schriner
Noes: None
Abstain: None
Leave of Absence: Bloom; Castelli

The United States is the only industrialized nation that does not guarantee paid leave for new parents. California is one of the few states that provides some income replacement for workers on family leave. The California Paid Family Leave Law provides 55% wage replacement for six weeks time off to bond with new child or care for seriously ill family member. Starting in January 2018, the wage replacement will increase to 70% or 60% of the employee’s salary, depending on income level. The CA State Paid Family Leave is funded through employee payroll deductions where employees must pay into the State Disability Insurance Program in order to be eligible for paid family leave. Research indicates that paid leave results in a larger increase in productivity and in worker morale while child health is also positively correlated with paid family leave access.¹ Yet many low wage workers cannot afford to take any time off when there is not 100% wage replacement, including many women, unmarried workers, and workers of color. A 2012 study conducted by the Center of Study, Labor, and Democracy found that the lowest income workers who contributed into the program but were unable to access the leave due to the low wage replacement as well as a lack of awareness and knowledge about the program. Awareness was lowest among workers earning less than $15 an hour.²

BACKGROUND
In April 2017, the Commission on the Status of Women and the Labor Commission received a referral to conduct outreach for a supplemental Paid Family Leave Ordinance that with CA Paid Family Leave payment will total 100%- but does not exceed 100%- of an employee’s weekly salary for 6 weeks of leave. This referral is an initiative that followed the San Francisco Supplemental Paid Parental Leave Ordinance designed to ensure that employees eligible to receive the CA State Paid Family Leave are able to do so with a 100% wage replacement. Under the draft ordinance, an employee is required to first submit an approval from the State Paid Leave program to their employer before receiving supplemental Paid Leave. The supplemental wage replacement is calculated by the employer or employee based on the gross wage derived from dividing the State’s maximum weekly benefit amount by percentage rate of wage replacement.

Our Process
Our five-month (May 2017-October 2017) targeted outreach strategy obtained feedback from Berkeley business owners, community members, and experts.

Targeted Business Community Outreach
☐ Contacted all 15 Berkeley business associations about the proposed ordinance.
☐ Presented the proposed ordinance and obtained feedback in-person at three association meetings.
☐ Co-hosted two focus group roundtables with the Berkeley Chamber of Commerce.
☐ Invited all 15 business association members to the Paid Family Leave Town Hall.
☐ Asked all 15 business associations to send feedback via email if unavailable for in-person meetings.

Community Members
☐ Hosted a public town hall to present the proposed Paid Family Leave ordinance and obtain public comments, including presenting a panel of six experts on different aspects of paid family leave.
☐ Publicized the town hall via councilmembers, news outlets, community groups, and local neighborhood associations.
☐ Publicized email to receive paid leave comments if unavailable to attend in-person town halls.

Feedback Received

Berkeley Community:
☐ Include a broader definition of “family member” to include all relatives to whom an employee can demonstrate a personal responsibility.
Include a broader definition of a “new child” to include adopted children of any age and children of any age who become family members as the result of court-ordered placement.

Place resources and concentrated effort in educating and informing healthcare professionals, childcare workers, and educators about the benefits of the State and City paid leave ordinances.

Place a priority on educating low income workers about the benefits, as many are unaware of the benefits they would be eligible to receive.

If the City seeks to impose these obligations on businesses, the City too should be required to pay supplemental leave. City workers also deserve the benefits of the ordinance, and some of the lowest paid workers work for the City.

Ensure that businesses are not able to use vacation time or paid sick time to cover paid family leave.

The Berkeley Business Community:

Expand the amount of time provided for employees to work prior to becoming eligible to receive the pay to 180 days.

Expand the number of employees needed to be a “covered employer” to 50+ employees.

Exclude part-time employees and instead include a criteria of a full time and “full time” equivalent based on the number of hours worked when defining part time employees.

Allow employers to use other paid time off to cover paid family leave.

Reduce the impact of this and other ordinances on small businesses.

Exempt commissioned employees as “covered employees.”

The Commissions’ Recommendations

Recommendation #1: Job Protection

We recommend adding job protection as a provision for employees using the supplemental paid leave benefit. While federal law provides job protection for some employees, some employees covered under the Berkeley ordinance would not fall within the federal job protection category, including employees in businesses with less than 50 employees and employees who have worked less than one year with their employer. Without job protection, employees could be fired for using their supplemental paid family leave. Job protection will ensure that all eligible employees will not be fired while using their paid family leave.

The attached draft ordinance includes this language under Chapter 9.90.
Recommendation #2: Include the City of Berkeley Under “Covered Employer”

Before the City of Berkeley asks businesses to fund supplemental wage replacement, it is essential that the City ensure that it provides adequate wage replacement for its own employees. Some of the lowest paid workers in the City include its recreation employees who are unable to access the California State Paid Leave program because of the low wage replacement. While San Francisco’s paid family leave ordinance exempts the City, San Francisco already provides 12 weeks of supplemental paid leave for their city employees. The standard policy for City of Berkeley employees does not include any supplemental wage replacement.

The attached draft ordinance includes this language under Chapter 9.90.070.

Recommendation #3: Resources for Outreach and Education

We recommend that the City allocate $50,000 specifically towards outreach and education to ensure the ordinance has its intended effects. Many employees will be unaware of the benefits they would be eligible to receive under the new ordinance. Prior research on the CA Paid Family Leave program has shown that the lowest income employees already do not access the State program due to the lack of public education programs. The ordinance’s further technical language may be even more difficult to understand or inaccessible for the most vulnerable employees. An allocation of resources to conduct concentrated outreach in-person and online to employees, employers, and professionals interacting with employees who may be eligible will ensure that all eligible employees have equal opportunity to access the benefits. We have identified two non-profit organizations who conducted outreach for San Francisco’s paid parental leave ordinance. Both organizations are willing to partner with the City of Berkeley to conduct similar outreach. In addition, we recommend hiring one part- time employee to coordinate outreach and handle enforcement issues.

Resources should also be allocated to assist employers to obtain reimbursement from employees who terminate employment within 90 days of returning from leave, as is required by the ordinance. Many employers are unable to spend the adequate time and resources to gain reimbursement from employees.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

RATIONALE FOR RECOMMENDATION

These suggested recommendations will affirm Berkeley’s commitment to low income workers, families, and gender equity. This ordinance will make the City of Berkeley’s paid family leave policy the most progressive family leave policy in the United States.
ALTERNATIVE ACTIONS CONSIDERED
No other alternative actions were considered based on City Council’s referral.

CITY MANAGER
See companion report

CONTACT PERSONS
Shallon Allen, Secretary, Commission on the Status of Women
Delfina Geiken, Secretary, Commission on Labor

Attachments:
1: Ordinance recommended by Commission on the Status of Women and Commission on Labor
2: April 25, 2017 Council Referral and draft ordinance
3: Flyers used to publicize events for community input
ORDINANCE NO. #,###-N.S.

PAID FAMILY LEAVE FOR PURPOSES OF BONDING WITH A NEW CHILD AND CARING FOR SERIOUSLY ILL FAMILY MEMBER; ADDING BERKELEY MUNICIPAL CODE CHAPTER 9.90

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Legislative findings:

A. The City of Berkeley hereby finds that:

1. The Applicability of this Chapter relates to California’s family leave insurance program codified at Unemployment Insurance Code Section 3300 et seq., which allows employees who contribute to the California State Disability Insurance Fund to be entitled to six weeks of partial wage replacement up to a maximum weekly benefit amount to bond with a new child or care for a seriously ill family member. This Chapter is intended to supplement the California Paid Family Leave partial wage replacement by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee’s weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern of loss of income does not preclude Berkeley employees from bonding with their new child or caring for a seriously ill family member.

2. California has a family leave insurance program that provides partial wage replacement to eligible employees on leave for family caregiving or bonding with a new child (“California Paid Family Leave”). Under the program, codified at Unemployment Insurance Code Section 3300 et seq., employees who contribute to the California State Disability Insurance fund are entitled to six weeks of partial pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or new foster child, or to care for a seriously ill family member.

3. As of 2017, workers eligible for California Paid Family Leave can take up to six weeks of paid time off at 55% of their weekly wages up to a maximum weekly benefit amount to bond with a new child or care for a seriously ill family member. The weekly benefit amount is determined by using the employee’s highest-earning calendar quarter during an approximately 12-month base period. As of 2017, the maximum weekly benefit amount is $1,173 to qualify for the maximum weekly benefit amount, an individual must earn at least $26,070.92 in a calendar quarter during the base period. This Ordinance is based on San Francisco’s Paid Parental Leave Ordinance which passed in April 2016.

4. California Paid Family Leave is available to nearly all private sector workers who pay into the SDI program, either through payroll deductions or voluntarily.

5. This Chapter is intended to supplement the California Paid Family Leave partial wage replacement by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee’s weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern of loss of income does not preclude parents in Berkeley from bonding with their new child or taking care of a seriously ill family member.
Section 2. The Berkeley Municipal Code is hereby amended by adding Chapter 9.90, to read as follows:

9.90.010 Definitions
For the purposes of this Chapter 9.90, the following definitions apply:

A. “California Paid Family Leave” means the State of California’s partial wage replacement insurance plan for paid family leave codified at the California Unemployment Insurance Code, Division 1, Part 2, Chapter 7 (commencing with Section 3300), as that law may be amended from time to time with respect to eligibility for, duration of, or amount of paid family leave compensation, or any other matter pertaining to paid family leave under that law.”

B. “City” means the City of Berkeley.

C. “Department” shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

D. “Covered Employee” means any person, including but not limited to part-time and temporary employees, who is employed by a Covered Employer (1) who commenced employment with the Covered Employer at least 90 days prior to the start of the California Paid Family leave period, (2) who performs at least eight hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of the City, and (4) who is eligible to receive paid family leave compensation from the State of California under the California Paid Family Leave law for the purpose of bonding with a new child. Where a person’s weekly work hours fluctuate from week to week, whether the person meets the eight-hour and/or 40% threshold requirements will be determined by using an average of the person’s weekly hours worked for the Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the person’s California Paid Family Leave period. If the person was on unpaid or partially paid leave during any of the aforementioned pay periods, such pay period(s) shall not be counted towards the average referenced in the preceding sentence; rather, earlier corresponding pay periods will be used for that person in order to satisfy the above designated number of pay periods, but in no case shall pay periods earlier than 52 weeks prior to the California Paid Family Leave period be used in calculating the average.

E. “Covered Employer” means any person, as defined in Section 18 of the California Labor Code, including 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, employs or exercises control over the wages, hours, or working conditions of an employee and who regularly employs 25 employees or more worldwide. Covered Employer shall not include the University of California or any other governmental entity other than the City of Berkeley.

F. “New Child Bonding” means bonding with the Covered Employee’s minor child during the first year after the birth of the child or after placement of the child with the Covered Employee through foster care or adoption, per Section 3301 of the California Unemployment Insurance Code.
G. “Caring for a Seriously Ill Family Member” means caring for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner.

H. “State” means the State of California, including the State of California Employment Development Department.

I. “Supplemental Compensation” means a Covered Employer’s obligation to pay a Covered Employee’s partial weekly salary in accordance with Chapter 9.90.

J. “Voluntary Separation” means the termination of a Covered Employee’s employment from a Covered Employer as a result of the Covered Employee voluntarily resigning at his/her own instance without having been requested to do so by the Covered Employer, excluding circumstances beyond a Covered Employee’s control, including, but not limited to, circumstances where the employer is responsible for the employee’s separation (e.g., the employer does not return the employee to his/her same position or reinstate the employee to a comparable position or fails to provide employee with lactation accommodations), or circumstances where the employee is needed to care for a seriously ill family member (e.g. the employee’s new child has a serious health condition requiring the employee’s full-time care).

9.90.030 Employer’s Obligations and Employee’s Rights for Supplemental Paid Leave

A. This Section applies to Covered Employees who are receiving California Paid Family Leave benefits for the purposes of New Child Bonding or Caring for a Seriously Ill Family Member.

B. Supplemental Compensation:

1. General.
   a. Except as stated in subsection b2, when a Covered Employee receives California Paid Family Leave compensation for the purpose of New Child Bonding or Caring for a Seriously Ill Family Member, a Covered Employer shall supplement the California Paid Family Leave weekly benefit amount that the employee is receiving by paying the employee Supplemental Compensation in an amount such that the total of the California Paid Family Leave compensation the employee is receiving and the Supplemental Compensation provides, but does not exceed, 100% of the employee’s current normal gross weekly wage.

   b. If the Covered Employee’s weekly wage fluctuates, the employee’s normal gross weekly wage shall be calculated based on an average of the employee’s weekly earnings from the Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the employee’s California Paid Family Leave period. If the employee was on unpaid or partially paid leave during any of the aforementioned pay periods, such pay period(s) shall not be counted towards the average referenced in the preceding sentence; rather, the average shall be calculated using additional earlier corresponding pay periods in order to satisfy the above designated number of pay periods, but in no case shall pay periods earlier than 52 weeks prior to the California Paid Family Leave period be considered. Notwithstanding the preceding sentence, if the Covered Employee’s weekly wage fluctuates and the employee has worked for the Covered Employer for less than 52 weeks, the weekly wage shall be calculated based on an average of the employee’s weekly earnings for the entire period of employment to date.
c. If the California Paid Family Leave weekly benefit amount that the Covered Employee is receiving from the State is based on earnings from a calendar quarter during which the employee did not work for the Covered Employer, or during which the employee earned a higher weekly wage from the Covered Employer than the employee is receiving at the time of his or her leave, the Supplemental Compensation amount shall be calculated to provide 100% of the employee’s normal gross weekly wage in his or her current position; provided, however, that reducing a Covered Employee’s wages during the leave period or within 90 days of the employee’s having made a request or application for California Paid Family Leave shall raise a rebuttable presumption that such wage reduction was made to reduce the Covered Employer’s Supplemental Compensation obligations under this Section 9.90.040. Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the reduction was solely for a reason other than reducing its obligations to pay Supplemental Compensation, the employer shall be obligated to pay Supplemental Compensation during the leave period based on the employee’s prior wage rate.

d. Multiple Employers:
   i. Where the Covered Employee works for more than one employer, the Supplemental Compensation amount shall be apportioned between or among the Covered Employers based on the percentage of the Employee’s total gross weekly wages received from each employer. For example, if the Employee earns $800 a week from Covered Employer A, and $200 per week from Covered Employer B for a combined total of $1,000, Employer A shall pay 80% of the Supplemental Compensation amount and Employer B shall pay 20% of the Supplemental Compensation amount. If the Employee’s weekly wage for a given Employer fluctuates, the percentage referenced in this subsection shall be calculated by averaging the employee’s weekly wages earned from the Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the leave period. If the employee was on unpaid or partially paid leave during any of the aforementioned pay periods, such pay period(s) shall not be counted towards the average referenced in the preceding sentence; rather, the average shall be calculated using additional earlier corresponding pay periods in order to satisfy the above designated number of pay periods, but in no case shall pay periods earlier than 52 weeks prior to the California Paid Family Leave period be considered.

   ii. In cases where the Covered Employee works for a Covered Employer and a non-Covered Employer, the Covered Employer shall be responsible only for its percentage of the Employee’s total gross weekly wages. For example, if the Employee earns $800 per week from the covered Employer, and $200 per week from the non-covered Employer for a combined total of $1,000, the Covered Employer shall pay 80% of the Supplemental Compensation amount and the Non-Covered Employer shall pay nothing.

   iii. In cases of multiple employers, the Covered Employee shall, as a precondition of receiving Supplemental Compensation, provide the Covered Employer(s) with both (1) a copy of the employee’s Notice of Computation of California Paid Family Leave Benefits from the State or other legally authorized statement, and (2) information pertaining to wages received from all employers during the 90 days prior...
to the leave period on a form prepared by the Department and signed by the employee under penalty of perjury. A Covered Employee’s failure to comply with this requirement shall relieve the Covered Employer(s) of their obligation to provide employee with Supplemental Compensation.

2. Maximum Weekly Benefit Amount. In the case of a Covered Employee who is receiving the maximum weekly benefit amount under the California Paid Family Leave law, the Supplemental Compensation shall not be calculated to reach 100% of the employee’s total normal gross weekly wage. Rather, the amount of Supplemental Compensation shall be calculated based on the gross wage that is derived from dividing the State’s maximum weekly benefit amount by the percentage rate of wage replacement provided under the California Paid Family Leave law.

3. Termination During Leave Period. A Covered Employer’s obligation to provide Supplemental Compensation under this Section 9.90.040 applies only during the period the Covered Employee is receiving California Paid Family Leave Benefits for New Child Bonding or Caring for a Seriously Ill Family Member; provided, however, that if a Covered Employer terminates a Covered Employee during the leave period, the employer’s obligation to pay Supplemental Compensation shall continue for the remainder of the period the Covered Employee is receiving California Paid Family Leave.

4. Termination Prior to Leave Period. Terminating a Covered Employee prior to the employee’s leave period but within 90 days of the employee’s having notified the Covered Employer of his or her intent to apply for and/or use California Paid Family Leave shall raise a rebuttable presumption that such termination was taken to avoid the Covered Employer’s Supplemental Compensation obligations under this Section 9.90.040. Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the termination was solely for a reason other than avoidance of its obligation to pay Supplemental Compensation, the employer shall be obligated to pay the terminated employee Supplemental Compensation.

5. Unused Vacation Leave. Covered Employees must not be required to apply unused vacation leave to help meet the employer’s obligation under this section to provide Supplemental Compensation during the leave period.

6. Voluntary Plans. A Covered Employer who has received State approval to pay California Paid Family Leave Compensation through a voluntary disability insurance plan in accordance with California Unemployment Insurance Code, Division 1, Part 2, Chapter 6 (commencing with Section 3251) must comply with the Supplemental Compensation requirements of this Section 9.90.030 either by providing the Supplemental Compensation through the approved voluntary plan or by paying Supplemental Compensation directly to the Covered Employee.

7. Integration/Coordination of Benefits. In accordance with California Unemployment Insurance Code Section 2656, a Covered Employee who is receiving California Paid Family Leave Benefits may not receive Supplemental Compensation under this Chapter 9.90 which would result in the employee’s receiving total compensation while on paid leave that is greater than the employee’s normal gross weekly wages. As a precondition of receiving Supplemental Compensation, a Covered Employee must either (1) provide the Covered Employer with a copy of the employee’s Notice of Computation of California Paid Family Leave Benefits from the State or other legally authorized statement, or (2) at the time of applying for California Paid Family
Leave, provide the State with written authorization to disclose the weekly benefit amount to the employer. A Covered Employee’s failure to comply with this requirement shall relieve the Covered Employer of its obligation to provide the employee with Supplemental Compensation.

8. Existing Paid Leave Policies. This Chapter 9.90 does not require a Covered Employer to provide Supplemental Compensation under Chapter 9.90 to a Covered Employee if the employer’s existing policy provides the employee with at least six weeks fully paid leave within any twelve-month period for purposes of New Child Bonding or Caring for a Seriously Ill Family Member, whether or not such paid leave includes California Paid Family Leave benefits. Unless the Employee elects otherwise, the six weeks fully paid leave referenced in the prior sentence must be provided as six consecutive weeks.

9. Reimbursement. As a precondition of receiving Supplemental Compensation, a Covered Employee must agree to reimburse the full amount of Supplemental Compensation received from any Covered Employer(s) if the employee engages in Voluntary Separation from employment with the Covered Employer(s) within 90 days of the end of the Employee’s leave period and if the Employer requests such reimbursements in writing.

9.90.040 Notice and Posting

Every Covered Employer shall post in a conspicuous place at any workplace or jobsite where any Covered Employee works a notice, in all languages spoken by more than 5% of the employees at the workplace or job site, a poster informing Covered Employees of their rights under this article.

9.90.050 Employer’s Records

A. Covered Employers shall retain records documenting Supplemental Compensation paid to employees as required by this Chapter, for a period of three years, and shall allow the City to access such records, with appropriate notice and at a mutually agreeable time, to monitor compliance or investigate complaints regarding compliance with the requirements of this Chapter 9.90.

B. When an issue arises as to the employee’s entitlement to Supplemental Compensation under this Chapter 9.90, if the Covered Employer does not maintain or retain adequate records documenting Supplemental Compensation paid to the employee, or does not allow the City reasonable access to such records, it shall be presumed that the employer has violated this Article, absent clear and convincing evidence otherwise.

9.90.060. Exercise of Rights Protected; Retaliation Prohibited

A. It shall be unlawful for a Covered Employer or any other person to do any of the following:

1. Refuse to allow a Covered Employee to take leave to receive California Paid Family Leave benefits and Supplemental Compensation as provided for under this Chapter 9.90 and thereafter return to the same or a comparable position upon the termination of the leave;
2. Interfere with, restrain, or deny the exercise or attempt to exercise, any right protected under this Chapter 9.90;
3. Discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights to Supplemental Compensation protected under this Chapter 9.90. Such rights include, but are not limited to, the right to Supplemental Compensation pursuant to this Chapter; the right to file a complaint or inform any person about any employer’s alleged violation of this Chapter; the right to cooperate with the City in investigations of alleged violations of this Chapter; and the right to inform any person of his or her possible rights under this Chapter.

B. It shall be unlawful for a Covered Employer’s absence control policy to count California Paid Family leave taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

C. Protections of this Section 9.90.070 shall apply to any person who mistakenly but in good faith alleges violations of the Section 9.90.070.

D. Taking adverse action against a person within 90 days of the person’s exercising any rights to Supplemental Compensation; filing a complaint with the City or a court alleging a violation of any provision of this Chapter; informing any person about an employer’s alleged violation of this Chapter; cooperating with the City or other persons in the investigation or prosecution of any alleged violation of this Chapter; opposing any policy, practice, or act that is unlawful under this Chapter; or informing any person of his or her rights under this chapter; shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights. Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the adverse action was solely for a reason other than retaliation, the employer shall be deemed to have violated this Section 9.90.070.

9.90.070 Implementation

A. Guidelines: The Department shall be authorized to coordinate implementation and enforcement of this Chapter 9.90 and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Berkeley Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of their rights under this Chapter, for monitoring employer compliance with this Chapter and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter.

B. Reporting Violations: Any person may report to the Department in writing any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary
to enforce this Chapter or other Employee protection laws. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

C. Investigation: The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution: The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint. (Ord. 7505-NS § 1 (part), 2016: Ord. 7352-NS § 1 (part), 2014)

9.90.080 Enforcement

A. Where prompt compliance is not forthcoming, the City and the Department shall take any appropriate enforcement action to secure compliance, including but not limited to the following:

1. The City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:
   a. A fine of one thousand dollars ($1,000.00) may be assessed for retaliation by an Employer against a Covered Employee for exercising rights protected under this Chapter for each Employee retaliated against.
   b. A fine of five hundred dollars ($500.00) may be assessed for any of the following violations of this Chapter:
      i. Failure to post any notice, bulletin, or information required under Section 60 of this Chapter
      ii. Failure to provide notice of investigation to Employees
      iii. Failure to post notice of violation to public
      iv. Failure to maintain records for four years
      v. Failure to allow the City access to payroll records
      vi. Failure to provide to an Employee any information required to be provided to an Employee under Section 60 of this Chapter.
   c. A fine equal to the total amount of appropriate remedies, pursuant to subsection E of this section. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

2. Alternatively, the City may pursue administrative remedies in accordance with the following procedures:
a. Whenever the City determines that a violation of any provision of this Chapter is occurring or has occurred, the City may issue a written compliance order to the Employer responsible for the violation.

b. A compliance order issued pursuant to this chapter shall contain the following information:
   i. The date and location of the violation;
   ii. A description of the violation;
   iii. The actions required to correct the violation;
   iv. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
   v. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process;
   vi. A warning that the compliance order shall become final unless a written request for hearing before the City is received within fourteen days of receipt of the compliance order.

c. Following receipt of a timely request for a hearing, the City shall provide the Employer responsible for the violation with a hearing and, if necessary, a subsequent appeal to the City Council that affords the Employer due process. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order.

3. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

B. Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys’ fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys’ fees and costs.

C. This Section shall not be construed to limit an Employee’s right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

D. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied.
E. The remedies for violation of this Chapter include but are not limited to:

1. Reinstatement, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the Californián Labor Code, to the date the wages are paid in full.

3. Reimbursement of the City’s administrative costs of enforcement and reasonable attorney’s fees.

4. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to pay an additional sum as a civil penalty in the amount of $50 to the City for each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

F. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered. (Ord. 7505-NS § 1 (part), 2016: Ord. 7352-NS § 1 (part), 2014)

9.90.090 Waiver through Collective Bargaining

All or any portion of the applicable requirements of this Chapter shall not apply to employees covered by a bona fide collective bargaining agreement if (1) such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms, or (2) the agreement was entered into before the effective date of the ordinance enacting this Chapter. The exception designated (2) in the preceding sentence shall not apply to any such agreement once it has been extended or expired.

9.90.100 Other Legal Requirements

A. This Chapter provides minimum requirements pertaining to paid leave as provided herein. It shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater leave, whether paid or unpaid, or that extends other protections to employees.

B. This Chapter provides minimum requirements pertaining to paid leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter.

C. This Chapter is intended to supplement other available sources of income during specified periods of leave to which the employee is otherwise eligible. Nothing in this Chapter shall be construed to expand, reduce, or otherwise affect the total amount of parental or other leave time available to employees under federal, state, or local law.
9.90.110 General Welfare & Consistency with Federal and State Law

A. Undertaking for the General Welfare: In enacting and implementing this Chapter, the City is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

B. Severability: If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter.

C. No Conflict with Federal or State Law: Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with federal or state law.

D. Expiration: This Chapter shall expire by operation of law if the Legislature amends the California Paid Family Leave program such that the benefits provided under that program amount to 100% of an eligible employee’s wages, as capped by any maximum benefit amount under the State law. Upon certification from the City Attorney to the City Council that such a change in State law has occurred, the City Attorney shall cause the Chapter to be removed from the Berkeley Municipal Code.

E. Change in Federal Law: Within 180 days of final enactment of any federal law requiring private employers to provide paid leave to employees or providing governmentally funded paid leave, the City Manager shall provide a report to the City Council analyzing the impact of the newly adopted federal law on employers and employees subject to this Chapter as well as any overlap between the federal benefits and benefits required under this Chapter. In the report, the City Manager may, in his or her discretion, recommend changes to this Chapter.
REVISED AGENDA MATERIAL

Meeting Date: April 25, 2017
Item Number: 38
Item Description: Referral to the Labor Commission and the Commission on the Status of Women: Paid Family Leave Ordinance
Submitted by: Councilmember Ben Bartlett

- Amended background to provide additional information regarding the need for paid leave to care for children and other family members with serious health conditions.
- Revised details regarding California’s Paid Family Leave program.
- Revised the definition of “Covered Employer” to include those that regularly employ more than 25 employees worldwide.
- Revised the definition of “Caring for a Seriously Ill Family Member” to include parent-in-law.
- Defined “Voluntary Separation” from employment as excluding extenuating circumstances, including, but not limited to, circumstances where the employer is responsible for the employee’s separation (e.g., the employer does not return the employee to his/her same position or reinstate the employee to a comparable position or fails to provide employee with lactation accommodations), or circumstances where the employee is needed to care for a seriously ill family member (e.g. the employee’s new child has a serious health condition requiring the employee’s full-time care).
- Amended details regarding the logistics of supplemental compensation to be consistent with the state paid leave program.
- Revised pay periods used to calculate average wages in determining supplemental compensation from 26 weeks prior to the date of leave to 52 weeks prior to the date of leave.
To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett  
Subject: Referral to the Labor Commission and the Commission on the Status of Women: Paid Family Leave Ordinance

RECOMMENDATION
Refer the attached ordinance for consideration by to the Labor Commission and the Commission on the Status of Women to help in the development of a Paid Family Leave Ordinance for the City of Berkeley.

The Labor Commission shall be responsible for conducting a public hearing to collect community input on the attached draft legislation. The Labor Commission shall conduct outreach and invite relevant stakeholders to attend, including representatives from small business associations, chambers of commerce, Berkeley employers, and Berkeley employees.

The Commission on the Status of Women shall be responsible for research and overall project management.

The Commissions shall jointly prepare a report for submission to Council summarizing both commissions’ suggestions and the community’s suggestions for changes that should be made to the attached legislation.

BACKGROUND
The United States is the only industrialized nation that does not guarantee paid leave for new parents, and in some cases new parents are not guaranteed even unpaid leave. A 2012 survey by the US Department of Labor found that the main reason employees in the United States do not take unpaid leave under the federal Family Medical Leave Act is that they cannot afford to take it. Further, studies show that low-wage workers in particular would benefit from expanded paid family leave policies.

Giving employees the freedom right to take leave has important effects on quality of life – especially for new mothers. Babies whose mothers work during the first three months of the baby’s life are less likely to be breastfed, taken to the doctor for well-baby visits, or be up to-date on immunizations. According to a 2015 study, rates of breastfeeding through infancy in California increased by 10%-20% after California developed its Paid Family
Leave program, which entitles employees to receive partial wage replacement while on leave.

Experts have found that it takes at least several months for a pattern of interaction to begin to develop between parent and child where they recognize and learn to respond to each other’s distinct cues. Short-changing this time for parents to learn to be responsive caregivers may have impacts for children’s cognitive as well as social and emotional development.

Giving employees the freedom to take leave also has enormous positive implications for families with sick children. Children in poor families are more likely to have longer health-related absences and studies show that children recover faster when cared for by their parents, which also reduces health expenditures.

Surveys show that paid leave is the primary factor in their decisions about staying home when their children are sick. When parents cannot care for sick children and they must attend child care, it takes a toll on the health of the child, other children, and child care providers. Without access to paid leave, parents may postpone or skip the well-child visits recommended by physicians, and may interrupt necessary treatment. Children are therefore more vulnerable to preventable serious illness. Low-income parents experience difficulties caring for their sick children.

Giving employees the freedom to take leave to care for a sick family member has enormous implications for a large portion of our population. A 2012 survey of employees in the United States showed that 1.6% of all workers faced an unmet need for leave due to a parent’s, spouse’s, or child’s health condition.\(^1\) The National Alliance for Caregiving (NAC) reports that there are at least 43.5 million unpaid family caregivers in the United States and that family caregivers provide an average of 20 hours of care per week. Moreover, caregiving often isn’t limited to a few months, or even a year — in fact, caregiving lasts an average of almost five years and 70% of all caregivers are working while caring for a loved one.

Caregiving can cause significant financial, physical and emotional strain. NAC reports nearly 7 in 10 caregivers reporting having to make work accommodations while they are providing care to a loved one. Of caregivers who take time off to fulfill their responsibilities at home, 48% report losing income.\(^2\) Of caregivers who leave the workforce, half (52%) said they did so because their jobs did not allow the flexibility they needed to work and provide elder care.\(^3\) The average caregiver over 50 who leaves the workforce to care for

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a parent loses $303,880 in wages, Social Security and private pensions when they do so. For women, that penalty is even higher: more than $324,000. And caregiving takes more than a financial toll – It is widely documented that caregivers experience high levels of stress, depression, and suffer from higher rates of chronic disease, and diminished immune response. Family caregivers need paid time off to care for family members and maintain their own health without fear of disrupting their economic security.

Moreover, the number of older adults is expected to swell to more than 20% of the population by 2050. As our population ages and caregiving needs increase, paid leave will be even more critical to helping ensure working people can take care of their loved ones without risking their economic security.

In 2002, California became the first state in the United States to create the Paid Family Leave program – a family leave insurance program that provides income replacement to workers on leave for family caregiving or bonding with a new child. California’s family leave insurance program entitles employees who are on leave to bond with a new child or care for a seriously ill family member, to receive partial wage replacement of 55% of the employee’s weekly wages up to a maximum weekly benefit amount of $1,129. The maximum benefit amount in 2017 is $1,173.

According to a 2014 report by the California Senate Office of Research, the number of California Paid Family Leave claims filed by individuals in the lowest income bracket consistently is much smaller than the number filed by those in the highest income bracket. Indeed, low-wage workers earning $24,000 or less amount to almost 40% of all eligible PFL recipients in California, but they represent only 24% of actual claimants. Moreover, claims in the two lowest income brackets decreased gradually over the prior nine years. Numerous factors may contribute to this declining participation rate, including the current California Paid Family Leave partial wage-replacement rate of 55%, which may provide insufficient income, particularly for low-income households.

This Ordinance is intended to supplement the California Paid Family Leave partial wage replacement so that employees on leave will receive 100% of their weekly salary for the six-week period, subject to a weekly maximum benefit amount. The goal is to ensure that concern over loss of income does not preclude Berkeley employees from bonding with their new child or taking care of a seriously ill family member.

This is based on San Francisco’s Paid Parental Leave Ordinance which passed in April 2016 and became operative on January 1, 2017. We must follow San Francisco’s lead in making progressive policies to protect mothers, families, and children.

FINANCIAL IMPLICATIONS

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5 In 2018 the benefit rate will increase to 60 or 70%, depending on income.
Staff time.

ENVIRONMENTAL SUSTAINABILITY
No impact.

CONTACT PERSON
Councilmember Ben Bartlett, 510-981-7130

Attachments:
1: DRAFT Ordinance Amending the Berkeley Municipal Code by Requiring Employers to Provide Supplemental Compensation to Employees Who Are Receiving State Paid Family Leave for Purposes of Bonding with a New Child and Caring for a Seriously Ill Family Member
ORDINANCE NO. #,####-N.S.

ORDINANCE AMENDING THE BERKELEY MUNICIPAL CODE BY REQUIRING EMPLOYERS TO PROVIDE SUPPLEMENTAL COMPENSATION TO EMPLOYEES WHO ARE RECEIVING STATE PAID FAMILY LEAVE FOR PURPOSES OF BONDING WITH A NEW CHILD AND CARING FOR SERIOUSLY ILL FAMILY MEMBER.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code is hereby amended by adding Chapter 9.90, to read as follows:

Chapter 9.90
PAID FAMILY LEAVE

Sections:

Article I General
9.90.010 Applicability
9.90.020 Findings
9.90.030 Definitions

Article II Employer’s Obligations and Employee’s Rights
9.90.040 Supplemental Paid Leave
9.90.050 Notice and Posting
9.90.060 Employer’s Records
9.90.070 Exercise of Rights Protected; Retaliation Prohibited

Article III Implementation and Enforcement
9.90.080 Implementation
9.90.090 Enforcement
9.90.100 Waiver Through Collective Bargaining
9.90.100 Other Legal Requirements

Article IV General Welfare & Consistency with Federal and State Law
9.90.110 Undertaking for the General Welfare
9.90.120 Severability
9.90.130 No Conflict with Federal or State Law
9.90.140 Expiration
9.90.150 Change in Federal Law
9.90.010 Applicability
This Chapter relates to California’s family leave insurance program codified at Unemployment Insurance Code Section 3300 et seq., which allows employees who contribute to the California State Disability Insurance Fund to be entitled to six weeks of paid time off at 55% of their weekly wages partial wage replacement up to a maximum weekly benefit amount to bond with a new child or care for a seriously ill family member.

This Chapter is intended to supplement the California Paid Family Leave partial wage replacement by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee’s weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern of loss of income does not preclude Berkeley employees from bonding with their new child or caring for a seriously ill family member.

9.90.020 Findings
A. California has a family leave insurance program that provides partial wage replacement to eligible employees on leave for family caregiving or bonding with a new child (“California Paid Family Leave”). Under the program, codified at Unemployment Insurance Code Section 3300 et seq., employees who contribute to the California State Disability Insurance fund are entitled to six weeks of partial pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or new foster child, or to care for a seriously ill family member.

B. As of January 20162017, workers eligible for California Paid Family Leave can take up to six weeks of paid time off at 55% of their weekly wages up to a maximum weekly benefit amount to bond with a new child or care for a seriously ill family member. The weekly benefit amount is determined by using the employee’s highest-earning calendar quarter during an approximately 12-month base period. As of January 20162017, the maximum weekly benefit amount is $1,129. To qualify for the maximum weekly benefit amount, an individual must earn at least $26,070.92 in a calendar quarter during the base period. The Legislature is considering legislation that would extend the number of weeks of paid time off and increase the weekly benefit amount, but as of the enactment of this Chapter 9.90, the state legislation had not been passed. This Ordinance is based on San Francisco’s Paid Parental Leave Ordinance which passed in April 2016.

C. California Paid Family Leave is available to nearly all private sector workers who pay into the SDI program, either through payroll deductions or voluntarily.

D. This Chapter is intended to supplement the California Paid Family Leave partial wage replacement by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee’s weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that
concern of loss of income does not preclude parents in Berkeley from bonding with their new child or taking care of a seriously ill family member.

9.90.030 Definitions

For the purposes of this Chapter 9.90, the following definitions apply:

A. “California Paid Family Leave” means the State of California’s partial wage replacement insurance plan for paid family leave codified at the California Unemployment Insurance Code, Division 1, Part 2, Chapter 7 (commencing with Section 3300), as that law may be amended from time to time with respect to eligibility for, duration of, or amount of paid family leave compensation, or any other matter pertaining to paid family leave under that law.”

B. “City” means the City of Berkeley.

C. “Department” shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

D. “Covered Employee” means any person, including but not limited to part-time and temporary employees, who is employed by a Covered Employer (1) who commenced employment with the Covered Employer at least 90 days prior to the start of the California Paid Family Leave period, (2) who performs at least eight hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of the City, and (4) who is eligible to receive paid family leave compensation from the State of California under the California Paid Family Leave law for the purpose of bonding with a new child. Where a person’s weekly work hours fluctuate from week to week, whether the person meets the eight-hour and/or 40% threshold requirements will be determined by using an average of the person’s weekly hours worked for the Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the person’s California Paid Family Leave period. If the person was on unpaid or partially paid leave during any of the aforementioned pay periods, such pay period(s) shall not be counted towards the average referenced in the preceding sentence; rather, earlier corresponding pay periods will be used for that person in order to satisfy the above designated number of pay periods, but in no case shall pay periods earlier than 26 weeks prior to the California Paid Family Leave period be used in calculating the average.

E. “Covered Employer” means any person, as defined in Section 18 of the California Labor Code, including 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, employs or exercises control over the wages, hours, or working conditions of an employee and who regularly employs 25 employees or more worldwide. Covered Employer shall not include the City, the University of California, or any other governmental entity.
F. “New Child Bonding” means bonding with the Covered Employee’s minor child during the first year after the birth of the child or after placement of the child with the Covered Employee through foster care or adoption, per Section 3301 of the California Unemployment Insurance Code.

G. “Caring for a Seriously Ill Family Member” means caring for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner.

H. “State” means the State of California, including the State of California Employment Development Department.

I. “Supplemental Compensation” means a Covered Employer’s obligation to pay a Covered Employee’s partial weekly salary in accordance with Chapter 9.90.

J. “Voluntary Separation” means the termination of a Covered Employee’s employment from a Covered Employer as a result of the Covered Employee voluntarily resigning at his/her own instance without having been requested to do so by the Covered Employer, excluding circumstances beyond a Covered Employee’s control, including, but not limited to, circumstances where the employer is responsible for the employee’s separation (e.g., the employer does not return the employee to his/her same position or reinstate the employee to a comparable position or fails to provide employee with lactation accommodations), or circumstances where the employee is needed to care for a seriously ill family member (e.g. the employee’s new child has a serious health condition requiring the employee’s full-time care).

**Article II    Employer’s Obligations and Employee’s Rights**

**9.90.040 Supplemental Paid Leave**

A. **Applicability:** This Section applies to Covered Employees who are receiving California Paid Family Leave benefits for the purposes of New Child Bonding or Caring for a Seriously Ill Family Member.

B. **Supplemental Compensation:**

   1. General.

      a. Except as stated in subsection B2, when a Covered Employee receives California Paid Family Leave compensation for the purpose of New Child Bonding or Caring for a Seriously Ill Family Member, a Covered Employer shall, during the leave period, supplement the California Paid Family Leave weekly benefit amount that the employee is receiving by paying the employee Supplemental Compensation in an amount such that the total of the California Paid Family Leave compensation the employee is receiving
and the Supplemental Compensation provides, but does not exceed, 100% of the employee’s current normal gross weekly wage.

b. If the Covered Employee’s weekly wage fluctuates, the employee’s normal gross weekly wage shall be calculated based on an average of the employee’s weekly earnings from the Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the employee’s California Paid Family Leave period. If the employee was on unpaid or partially paid leave during any of the aforementioned pay periods, such pay period(s) shall not be counted towards the average referenced in the preceding sentence; rather, the average shall be calculated using additional earlier corresponding pay periods in order to satisfy the above designated number of pay periods, but in no case shall pay periods earlier than 2652 weeks prior to the California Paid Family Leave period be considered. Notwithstanding the preceding sentence, if the Covered Employee’s weekly wage fluctuates and the employee has worked for the Covered Employer for less than 2652 weeks, the weekly wage shall be calculated based on an average of the employee’s weekly earnings for the entire period of employment to date.

c. If the California Paid Family Leave weekly benefit amount that the Covered Employee is receiving from the State is based on earnings from a calendar quarter during which the employee did not work for the Covered Employer, or during which the employee earned a higher weekly wage from the Covered Employer than the employee is receiving at the time of his or her leave, the Supplemental Compensation amount shall be calculated to provide 100% of the employee’s normal gross weekly wage in his or her current position; provided, however, that reducing a Covered Employee’s wages during the leave period or within 90 days of the employee’s having made a request or application for California Paid Family Leave shall raise a rebuttable presumption that such wage reduction was made to reduce the Covered Employer’s Supplemental Compensation obligations under this Section 9.90.040. Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the reduction was solely for a reason other than reducing its obligations to pay Supplemental Compensation, the employer shall be obligated to pay Supplemental Compensation during the leave period based on the employee’s prior wage rate.

d. Multiple Employers:

i. Where the Covered Employee works for more than one employer, the Supplemental Compensation amount shall be apportioned between or among the Covered Employers based on the percentage of the Employee’s total gross weekly wages received from each
employer. For example, if the Employee earns $800 a week from Covered Employer A, and $200 per week from Covered Employer B for a combined total of $1,000, Employer A shall pay 80% of the Supplemental Compensation amount and Employer B shall pay 20% of the Supplemental Compensation amount. If the Employee’s weekly wage for a given Employer fluctuates, the percentage referenced in this subsection shall be calculated by averaging the employee’s weekly wages earned from the Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the leave period. If the employee was on unpaid or partially paid leave during any of the aforementioned pay periods, such pay period(s) shall not be counted towards the average referenced in the preceding sentence; rather, the average shall be calculated using additional earlier corresponding pay periods in order to satisfy the above designated number of pay periods, but in no case shall pay periods earlier than 2652 weeks prior to the California Paid Family Leave period be considered.

ii. In cases where the Covered Employee works for a Covered Employer and a non-Covered Employer, the Covered Employer shall be responsible only for its percentage of the Employee’s total gross weekly wages. For example, if the Employee earns $800 per week from the covered Employer, and $200 per week from the non-covered Employer for a combined total of $1,000, the Covered Employer shall pay 80% of the Supplemental Compensation amount and the Non-Covered Employer shall pay nothing.

iii. In cases of multiple employers, the Covered Employee shall, as a precondition of receiving Supplemental Compensation, provide the Covered Employer(s) with both (1) a copy of the employee’s Notice of Computation of California Paid Family Leave Benefits from the State or other legally authorized statement, and (2) information pertaining to wages received from all employers during the 90 days prior to the leave period on a form prepared by the Department and signed by the employee under penalty of perjury. A Covered Employee's failure to comply with this requirement shall relieve the Covered Employer(s) of their obligation to provide employee with Supplemental Compensation.

2. **Maximum Weekly Benefit Amount.** In the case of a Covered Employee who is receiving the maximum weekly benefit amount under the California Paid Family Leave law, the Supplemental Compensation shall not be calculated to reach 100% of the employee’s total normal gross weekly wage. Rather, the amount of Supplemental Compensation shall be calculated based on the gross wage that is derived from dividing the State’s maximum weekly benefit amount by the
percentage rate of wage replacement provided under the California Paid Family Leave law.

3. **Termination During Leave Period.** A Covered Employer’s obligation to provide Supplemental Compensation under this Section 9.90.040 applies only during the period the Covered Employee *is eligible for and is receiving* California Paid Family Leave Benefits for New Child Bonding or Caring for a Seriously Ill Family Member; provided, however, that if a Covered Employer terminates a Covered Employee during the leave period, the employer’s obligation to pay Supplemental Compensation shall continue for the remainder of the period the Covered Employee is receiving California Paid Family Leave period.

4. **Termination Prior to Leave Period.** Terminating a Covered Employee prior to the employee’s leave period but within 90 days of the employee’s having made a request or application for or notified the Covered Employer of his or her intent to apply for and/or use California Paid Family Leave shall raise a rebuttable presumption that such termination was taken to avoid the Covered Employer’s Supplemental Compensation obligations under this Section 9.90.040. Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the termination was solely for a reason other than avoidance of its obligation to pay Supplemental Compensation, the employer shall be obligated to pay the terminated employee Supplemental Compensation during the leave period.

5. **Unused Vacation Leave.** To be eligible to receive Supplemental Compensation, a Covered Employee must agree to allow a Covered Employer, in the employer’s discretion, to apply up to two weeks of unused vacation leave that the employee has accrued as of the start of the leave period to help meet with the employer’s obligation under this Section to provide Supplemental Compensation during the leave period. If the Covered Employee does not agree, the Covered Employer is not required to provide Supplemental Compensation under this Chapter, but such lack of agreement shall have no effect on the Employee’s eligibility for California Paid Family Leave benefits or other benefits under the law. The preceding sentence shall not prevent a Covered Employer, in the employer’s discretion, from requiring a Covered Employee to take up to two weeks of earned but unused vacation leave prior to the employee’s initial receipt of California Paid Family Leave compensation as allowed under subsection (c) of Section 3303,1 of the California Unemployment Insurance Code, as amended, in addition to or in lieu of exercising the option provided in the foregoing sentence.

6. **Voluntary Plans.** A Covered Employer who has received State approval to pay California Paid Family Leave Compensation through a voluntary disability insurance plan in accordance with California Unemployment Insurance Code, Division 1, Part 2, Chapter 6 (commencing with Section 3251) must comply with the Supplemental Compensation requirements of this Section 9.90.030 either by
providing the Supplemental Compensation through the approved voluntary plan or by paying Supplemental Compensation directly to the Covered Employee.

7. **Integration/Coordination of Benefits.** In accordance with California Unemployment Insurance Code Section 2656, a Covered Employee who is receiving California Paid Family Leave Benefits may not receive Supplemental Compensation under this Chapter 9.90 which would result in the employee’s receiving total compensation while on paid leave that is greater than the employee’s normal gross weekly wages. As a precondition of receiving Supplemental Compensation, a Covered Employee must either (1) provide the Covered Employer with a copy of the employee’s Notice of Computation of California Paid Family Leave Benefits from the State or other legally authorized statement, or (2) **at the time of applying for California Paid Family Leave**, provide the State with written authorization to disclose the weekly benefit amount to the employer. A Covered Employee’s failure to comply with this requirement shall relieve the Covered Employer of its obligation to provide the employee with Supplemental Compensation.

8. **Existing Paid Leave Policies.** This Chapter 9.90 does not require a Covered Employer to provide Supplemental Compensation under Chapter 9.90 to a Covered Employee if the employer’s existing policy provides the employee with at least six weeks fully paid leave within any twelve-month period for purposes of New Child Bonding or Caring for a Seriously Ill Family Member, whether or not such paid leave includes California Paid Family Leave benefits. Unless the Employee elects otherwise, the six weeks fully paid leave referenced in the prior sentence must be provided as six consecutive weeks.

9. **Reimbursement.** As a precondition of receiving Supplemental Compensation, a Covered Employee must agree to reimburse the full amount of Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily separates **engages in Voluntary Separation** from employment with the Covered Employer(s) within 90 days of the end of the Employee’s leave period and if the Employer requests such reimbursements in writing.

9.90.050 **Notice and Posting**

Every Covered Employer shall post in a conspicuous place at any workplace or jobsite where any Covered Employee works a notice, in all languages spoken by more than 5% of the employees at the workplace or job site, a poster informing Covered Employees of their rights under this article.

9.90.060 **Employer’s Records**

A. Covered Employers shall retain records documenting Supplemental Compensation paid to employees as required by this Chapter, for a period of three years, and shall allow the City to access such records, with appropriate notice and at a mutually
agreeable time, to monitor compliance or investigate complaints regarding compliance with the requirements of this Chapter 9.90.

B. When an issue arises as to the employee’s entitlement to Supplemental Compensation under this Chapter 9.90, if the Covered Employer does not maintain or retain adequate records documenting Supplemental Compensation paid to the employee, or does not allow the City reasonable access to such records, it shall be presumed that the employer has violated this Article, absent clear and convincing evidence otherwise.

9.90.070 Exercise of Rights Protected; Retaliation Prohibited

A. It shall be unlawful for a Covered Employer or any other person to interfere with, restrain, or deny the exercise of the attempt to exercise, any right protected under this Chapter 9.90.

B. It shall be unlawful for a Covered Employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or to take adverse action against any person in retaliation for exercising rights to Supplemental Compensation protected under this Chapter 9.90. Such rights include but are not limited to the right to file a complaint or inform any person about any employer’s alleged violation of this Chapter; the right to cooperate with the City in investigations of alleged violations of this Chapter; and the right to inform any person of his or her possible rights under this Chapter.

C. Protections of this Section 9.90.070 shall apply to any person who mistakenly but in good faith alleges violations of the Section 9.90.070.

D. Taking adverse action against a person within 90 days of the person’s filing a complaint with the City or a court alleging a violation of any provision of this Chapter; of informing any person about an employer’s alleged violation of this Chapter; of cooperating with the City or other persons in the investigation or prosecution of any alleged violation of this Chapter; of opposing any policy, practice, or act that is unlawful under this Chapter; or of informing any person of his or her rights under this chapter; shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights. Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the adverse action was solely for a reason other than retaliation, the employer shall be deemed to have violated this Section 9.90.070.

Article III Implementation and Enforcement

9.90.080 Implementation
A. **Guidelines.** The Department shall be authorized to coordinate implementation and enforcement of this Chapter 9.90 and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Berkeley Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of their rights under this Chapter, for monitoring employer compliance with this Chapter and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter.

B. **Reporting Violations.** Any person may report to the Department in writing any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

C. **Investigation.** The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. **Informal Resolution.** The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint. (Ord. 7505-NS § 1 (part), 2016: Ord. 7352-NS § 1 (part), 2014)

**9.90.090 Enforcement**

A. Where prompt compliance is not forthcoming, the City and the Department shall take any appropriate enforcement action to secure compliance, including but not limited to the following:
1. The City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:

   a. A fine of one thousand dollars ($1,000.00) may be assessed for retaliation by an Employer against a Covered Employee for exercising rights protected under this Chapter for each Employee retaliated against.

   b. A fine of five hundred dollars ($500.00) may be assessed for any of the following violations of this Chapter:

      i. Failure to post any notice, bulletin, or information required under Section 60 of this Chapter

      ii. Failure to provide notice of investigation to Employees

      iii. Failure to post notice of violation to public

      iv. Failure to maintain records for four years

      v. Failure to allow the City access to payroll records

      vi. Failure to provide to an Employee any information required to be provided to an Employee under Section 60 of this Chapter.

   c. A fine equal to the total amount of appropriate remedies, pursuant to subsection E of this section. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

2. Alternatively, the City may pursue administrative remedies in accordance with the following procedures:

   a. Whenever the City determines that a violation of any provision of this Chapter is occurring or has occurred, the City may issue a written compliance order to the Employer responsible for the violation.

   b. A compliance order issued pursuant to this chapter shall contain the following information:

      i. The date and location of the violation;

      ii. A description of the violation;

      iii. The actions required to correct the violation;
iv. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;

v. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process;

vi. A warning that the compliance order shall become final unless a written request for hearing before the City is received within fourteen days of receipt of the compliance order.

c. Following receipt of a timely request for a hearing, the City shall provide the Employer responsible for the violation with a hearing and, if necessary, a subsequent appeal to the City Council that affords the Employer due process. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order.

3. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

B. Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys’ fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys’ fees and costs.

C. This Section shall not be construed to limit an Employee’s right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

D. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied.

E. The remedies for violation of this Chapter include but are not limited to:
1. Reinstatement, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

3. Reimbursement of the City’s administrative costs of enforcement and reasonable attorney’s fees.

4. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to pay an additional sum as a civil penalty in the amount of $50 to the City for each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

F. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered. (Ord. 7505-NS § 1 (part), 2016: Ord. 7352-NS § 1 (part), 2014)

9.90.100 Waiver Through Collective Bargaining

All or any portion of the applicable requirements of this Chapter shall not apply to employees covered by a bona fide collective bargaining agreement if (1) such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms, or (2) the agreement was entered into before the effective date of the ordinance enacting this Chapter. The exception designated (2) in the preceding sentence shall not apply to any such agreement once it has been extended or expired.

9.90.110 Other Legal Requirements

A. This Chapter provides minimum requirements pertaining to paid leave as provided herein. It shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater leave, whether paid or unpaid, or that extends other protections to employees.
B. This Chapter provides minimum requirements pertaining to paid leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter.

C. This Chapter is intended to supplement other available sources of income during specified periods of leave to which the employee is otherwise eligible. Nothing in this Chapter shall be construed to expand, reduce, or otherwise affect the total amount of parental or other leave time available to employees under federal, state, or local law.

**Article IV General Welfare & Consistency with Federal and State Law**

**9.90.110 Undertaking for the General Welfare**

In enacting and implementing this Chapter, the City is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**9.90.120 Severability**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter.

**9.90.130 No Conflict with Federal or State Law**

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with federal or state law.

**9.90.140 Expiration**

This Chapter 9.90 shall expire by operation of law if the Legislature amends the California Paid Family Leave program such that the benefits provided under that program amount to 100% of an eligible employee's wages, as capped by any maximum benefit amount under the State law. Upon certification from the City Attorney to the City Council that such a change in State law has occurred, the City Attorney shall cause the Chapter 9.90 to be removed from the Berkeley Municipal Code.

**9.90.150 Change in Federal Law**

Within 180 days of final enactment of any federal law requiring private employers to provide paid leave to employees or providing governmentally funded paid leave, the City Manager shall provide a report to the City Council analyzing the impact of the newly
adopted federal law on employers and employees subject to this Chapter as well as any overlap between the federal benefits and benefits required under this Chapter. In the report, the City Manager may, in his or her discretion, recommend changes to this Chapter.
The Commission on the Status of Women requests business owners to weigh in on Berkeley’s proposed Paid Family Leave Ordinance.

*Click this flyer for text of the proposed ordinance*

Community Meeting Room
Central Library
2090 Kittredge St
Berkeley, CA 94704
San Francisco’s Paid Parental Leave Ordinance: The First Six Months‡

November 2017

William H. Dow, University of California at Berkeley
Julia M. Goodman, Oregon Health & Science University/Portland State University
Holly Stewart, University of California at Berkeley

Abstract

In January 2017 San Francisco began implementing the Paid Parental Leave Ordinance (PPLO), the most far-reaching local paid parental leave law in the United States. Starting in 2004 California’s state disability insurance program has provided 55% pay for six weeks of parental leave to bond with a new child (in addition to typically 6-8 weeks of postpartum disability leave for biological mothers, also at 55% pay). However, many parents cannot afford to take this bonding leave at only partial pay, particularly low-income parents. The PPLO is designed to address this by requiring San Francisco employers to now supplement up to 100% pay for 6 weeks of parental bonding leave. This issue brief examines implementation and challenges during the first six months of the law; perceptions by public health, labor, and employer stakeholders; and early changes in take-up of parental bonding leave.

Overall we find that the PPLO implementation has proceeded smoothly, with broad support and little organized opposition. The many nuances of eligibility and benefit levels have required an extensive outreach campaign to educate employers and potential leave-takers; this has resulted in high awareness of the ordinance, but in-depth employer interviews revealed that there is still substantial confusion over details and dissatisfaction about complexity. Some employers expressed concern over the costs of complying with the mandate, but for most employers the costs are modest (an upcoming large-scale survey of employers will explore this in more detail).

Finally, early administrative data indicates a 6% increase in the number of San Francisco women taking bonding leave in the first half of 2017 versus the first half of 2016 (as compared to virtually no change in the rest of the state). In contrast, there was a 28% increase in men taking bonding leave (as compared to 3-9% increases elsewhere in the state). Thus initially paternal bonding leaves have increased more than maternal leaves; future analysis will also examine changes in leave duration and other characteristics of leave-takers.

‡ Support for this research was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.
1. Introduction
Paid parental leave is commonplace in other high-income countries, with the United States being the only wealthy country in the world without systematic paid leave benefits for new parents. The beneficial effects of leave-taking for both parents and children are well-documented: paid parental leave policies have been associated with increased breastfeeding, decreased infant mortality, decreased postpartum depression, increased immunizations, etc.1–8 Despite these benefits, parents in the United States face incomplete job protection laws and a patchwork of state and local policies that provide partial pay for only some parents. As a result, only about 13% of private-sector workers in the United States have any paid leave through their jobs.9 Yet more than 4.2 million workers take parental leave each year, mostly unpaid.10

Increased availability of (unpaid) parental leave enabled by the 1993 Family and Medical Leave Act (FMLA) has been associated with an increase in the share of mothers on maternity leave, but mostly among college-educated and/or married mothers.11 California’s 2004 Paid Family Leave (PFL) program somewhat narrowed this socioeconomic gap by providing partial (55%) pay during leave, doubling maternity leave utilization from approximately three to six weeks on average, with leave-taking expanding more among non-college educated, unmarried, and minority mothers.12 Yet parental leave-taking in California remains less common among lower socioeconomic status parents, in part due to the difficulty in affording leave when only partially paid. Furthermore, it remains unclear what effect paid parental leave policies have on fathers’ leave-taking, as they generally use parental leave at much lower rates than mothers. Fathers may be less responsive to existing paid parental leave policies because of stigma around men’s work and childrearing norms, or because they view partially paid leave as too costly. A recent study of the California PFL program estimated a 0.9 percentage point increase in the share of fathers of infants on leave, representing a 46 percent increase over the pre-PFL leave-taking rate of 2 percent.13

In this issue brief, we describe San Francisco’s Paid Parental Leave Ordinance (PPLO), its genesis and implementation, and early impacts six months after it took effect. We discuss findings from early administrative claims data from the California Employment Development Department (EDD); data from Annual Reporting Forms submitted by employers to the San Francisco Office of Labor Standards Enforcement (OLSE); and in-depth interviews with labor, public health, and employer stakeholders.

2. San Francisco’s Paid Parental Leave Ordinance
In April 2016, San Francisco passed the Paid Parental Leave for Bonding with New Child Ordinance (“ Paid Parental Leave Ordinance” or “ PPLO”). The PPLO requires covered employers to provide supplemental wage replacement to employees taking up to six weeks of leave to bond with a new child through California’s Paid Family Leave (PFL) program (Table 1). As of 2017, the statewide PFL program (financed by payroll taxes) provides 55% wage replacement for up to six weeks of bonding leave (with a cap for those earning above $2133/week). In 2018, this statewide PFL wage replacement rate is scheduled to increase to 60% or 70%, depending on income (60% for workers earning above one-third of statewide average weekly wages, and 70% below that threshold).
The San Francisco PPLO builds on the statewide PFL program by requiring covered employers to provide “Supplemental Compensation” such that an employee earns 100% of their weekly salary (up to the $2133/week cap) during the six week bonding leave period (Figure 1). Covered employers are generally private sector employers with employees who work in San Francisco; the initial phase of the law discussed in this issue brief was implemented January 1, 2017 for those employers with at least 50 employees worldwide, it was expanded to those with 35+ employees starting July 1, 2017, and will expand to those with 20+ employees starting January 1, 2018 (those with fewer than 20 employees are exempted). Covered employees must have started working for the employer at least 180 days prior to the leave and work in San Francisco for a covered employer at least 8 hours per week and 40% of their weekly hours, and be eligible for the California PFL benefits. These programs provide leave for both mothers and fathers, and include bonding with either a newborn or a newly adopted or foster child. Unlike California’s State Disability Insurance (SDI) and PFL programs, the PPLO supplemental compensation (raising leave pay from 55% to 100%) is not financed by payroll taxes but instead is a mandate that each employer self-finances the supplemental compensation for their own leave-taking employees.

The broad outlines of the eligibility and benefits discussed above have been feasible to communicate with employers and potentially eligible employees, but many people have expressed confusion about the nuances of exactly who is eligible, and who pays and receives how much. One crucial aspect of the PPLO that has been particularly unclear to many people is that it only mandates full pay during the six weeks of bonding leave, but not during the 6-8 weeks of disability leave that typically precedes bonding leave for new birth mothers. As noted in Table 1, birth mothers are also separately covered by California’s SDI program which provides 55% wage replacement while a birth mother is disabled, typically four weeks before the expected delivery date and six weeks (for a normal, vaginal delivery) or eight weeks (for a Cesarean delivery) after birth. (As with PFL, in 2018 the SDI replacement rate will also increase to 60% or 70%, depending on earnings.) Figure 1 illustrates this remaining gap: although PPLO enables six weeks of fully paid bonding leave which, after a normal birth, would occur during weeks 7-12 of postpartum maternity leave, the first six postpartum weeks of SDI leave are only partially paid. Thus many low-income San Francisco mothers may choose to cut-short the partially paid SDI leave, benefiting from six weeks of fully paid bonding leave, but with a total postpartum maternity leave of still well under the 12 weeks that some experts have called for.
Neither CA PFL nor SF PPLO provides job protection for employees on leave. Some employees have job protection if they are also covered by the Family and Medical Leave Act and/or California Family Rights Act, which cover firms with 50 or more employees. Beginning January 2018, a new law, the New Parent Leave Act will provide job-protected bonding leave to employees who work for companies with 20-49 employees.

### Table 1: Key paid leave policies in California

<table>
<thead>
<tr>
<th></th>
<th>State Disability Insurance (SDI) - Pregnancy</th>
<th>CA Paid Family Leave (PFL) - Bonding</th>
<th>SF Paid Parental Leave Ordinance (PPLO)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Effective date</strong></td>
<td>• Established 1946</td>
<td>• July 1, 2004</td>
<td>• January 1, 2017 (employers with 50+ employees)</td>
</tr>
<tr>
<td></td>
<td>• Covered pregnancy disability starting 1978 (Pregnancy Discrimination Act)</td>
<td></td>
<td>• July 1, 2017 (35+ employees)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• January 1, 2018 (20+ employees)</td>
</tr>
<tr>
<td><strong>Benefit amount†</strong></td>
<td>• In 2017, 55% wage replacement while disabled by pregnancy or childbirth, typically 4 weeks before expected delivery date and 6 weeks (for normal delivery) or 8 weeks (for Cesarean delivery) after birth</td>
<td>• In 2017, 55% wage replacement up to 6 weeks</td>
<td>• 100% of weekly salary, subject to a cap, for 6 weeks</td>
</tr>
<tr>
<td></td>
<td>• In 2018, wage replacement increases to 60% or 70%, depending on earnings</td>
<td>• In 2018, wage replacement increases to 60% or 70%, depending on earnings</td>
<td></td>
</tr>
<tr>
<td><strong>Eligibility</strong></td>
<td>• Birth mothers who are unable to perform their regular and customary job duties</td>
<td>• Mothers and fathers Employee has paid CA SDI payroll taxes</td>
<td>• Mothers and fathers</td>
</tr>
<tr>
<td></td>
<td>• Employee has paid CA SDI payroll taxes</td>
<td></td>
<td>• Worked for employer for ≥180 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Work ≥8 hours/week and 40% time in San Francisco</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Receiving CA PFL bonding benefits</td>
</tr>
<tr>
<td><strong>Financing</strong></td>
<td>• Financed through California’s State Disability Insurance (SDI) payroll tax</td>
<td>• Financed through California’s State Disability Insurance (SDI) payroll tax</td>
<td>• Employers self-finance supplemental pay (above CA PFL replacement rate) for their own leave-taking employees</td>
</tr>
</tbody>
</table>

†Neither CA PFL nor SF PPLO provides job protection for employees on leave. Some employees have job protection if they are also covered by the Family and Medical Leave Act and/or California Family Rights Act, which cover firms with 50 or more employees. Beginning January 2018, a new law, the New Parent Leave Act will provide job-protected bonding leave to employees who work for companies with 20-49 employees.
Origin of the PPLO

Prior to its passage, a group of government agencies, nonprofit organizations, community groups, and employers in San Francisco laid the groundwork for the PPLO. The Healthy Mothers Workplace Coalition (HMWC) formed in 2012 to “promote health and equity for working parents and their children” in San Francisco. The HMWC consists of diverse members representing non-profit, for-profit, and government stakeholders, including Legal Aid at Work, the San Francisco Department of Public Health, and the San Francisco Department on the Status of Women. This group identified a set of policies to improve working conditions for parents, contributing to the San Francisco Family Friendly Work Ordinance, the SB 63 New Parent Leave Act, and the PPLO. Members of the HMWC assisted the San Francisco supervisors and their staff as they debated and drafted the PPLO, and their expertise was helpful in ensuring integration with the California Paid Family Leave program, as well as in communicating with a broad range of key stakeholders. Numerous interviewees recommended that a coalition similar to the HMWC be formed in other jurisdictions considering paid parental leave policy changes.

The ordinance passed the Board of Supervisors unanimously, with little organized opposition. San Francisco is politically more liberal than most other cities in the United States, but nevertheless the business community often lobbies against potential legislation that is perceived as harmful to local businesses, thus it is remarkable that opposition was relatively muted. We did not engage in a thorough examination of the political forces underlying the PPLO, but that merits research as an interesting case study.
Some respondents noted that the public narrative on paid leave may be shifting more generally, in part because of the perceived public health benefits. A representative from the local public health department talked about paid leave as one of the major social determinants of birth outcomes that can be addressed:

*There are extremely broad inequities … that we’d like to influence, but in terms of specific policies of inequity between some European countries or even Canada and the United States, this is one of the easiest and lowest hanging fruits that we can do.*

**Employee, Public Health Department**

3. **Increase in PFL Bonding Claims during the First Six Months of PPLO Implementation (January – June 2017)**

We examined early data on quarterly PFL bonding claims filed with EDD by males and females in 2016, the year prior to the PPLO’s implementation, and the first half of 2017. We compare claims filed by residents of San Francisco, surrounding Bay Area counties (where some residents may have benefited from the law if they worked for an employer in San Francisco), Sacramento, Southern California urban counties, and the rest of the state. In San Francisco, the quarterly count of PFL bonding claims ranged from 841 to 924 among females and from 417 to 583 among males (Table 2).

<table>
<thead>
<tr>
<th></th>
<th>Female Bonding</th>
<th>Male Bonding</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Q1</td>
<td>850</td>
<td>447</td>
</tr>
<tr>
<td>2016 Q2</td>
<td>841</td>
<td>438</td>
</tr>
<tr>
<td>2016 Q3</td>
<td>886</td>
<td>509</td>
</tr>
<tr>
<td>2016 Q4</td>
<td>872</td>
<td>417</td>
</tr>
<tr>
<td>2017 Q1</td>
<td>924</td>
<td>553</td>
</tr>
<tr>
<td>2017 Q2</td>
<td>866</td>
<td>583</td>
</tr>
</tbody>
</table>

Source: Early results from California Employment Development Department

Figure 2 shows the percent change in 2017 PFL bonding claims relative to the same quarter in 2016 (e.g., 2017 Q1 compared to 2016 Q1, etc.) for males and females by geographic area. While females in San Francisco filed more claims for PFL bonding after PPLO implementation, this increase was small (8.7% in Q1, 3.0% in Q2, thus averaging about 6% in the first half of 2017). In contrast, males in San Francisco filed 23.7% and 33.1% (averaging 28%) more claims in the first two quarters of 2017 compared to the year before; male claims in the rest of the state increased between 3-9% in the first half of 2017, thus San Francisco male claims increased 19-25% more than the trends elsewhere. The relatively smaller increase in PFL bonding claims among females may reflect higher baseline levels of leave-taking (see Table 2) as well as the availability of six weeks of paid pregnancy disability leave through the State Disability Insurance program that birth mothers must take before filing for PFL bonding. Data presented here show changes in uptake of PFL for bonding; data on average duration of claims, when available, may reveal changes in the duration of leave taken among women.
4. Early stakeholder perceptions

In July and August of 2017, we conducted semi-structured interviews with seven key informants in the labor and employer communities and in San Francisco city departments who were involved with the passage and/or implementation of the PPLO. Stakeholders were asked to describe the genesis of the PPLO, problems that have arisen during implementation and efforts to address them, and perceptions of awareness and support among San Francisco employers and employees.

Additionally, the San Francisco Office of Labor Standards Enforcement (OLSE), the office charged with enforcing the PPLO, shared data gathered from employers through mandatory Annual Reporting Forms (ARF). As of June 2017, 3,680 San Francisco employers who filed an ARF with OLSE reported being covered by the PPLO, representing 68% of respondents (Table 3); because smaller employers were in fact not yet covered, awareness of the mandate appears quite high overall. Most employers report that they will integrate benefits with the state PFL program, but 8% report that they will go beyond the requirements of the PPLO and provide fully paid leave to employees. A majority of employers report that they will not require employees to use two weeks of vacation prior to taking PFL, though they are allowed to impose such a requirement.
Table 3: Employer compliance plans reported in OLSE Annual Reporting Form.

<table>
<thead>
<tr>
<th>When will you (the employer) be covered by the Paid Parental Leave Ordinance?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Already Covered</td>
<td>3680</td>
<td>68.2</td>
</tr>
<tr>
<td>July 1, 2017</td>
<td>644</td>
<td>11.9</td>
</tr>
<tr>
<td>January 1, 2018</td>
<td>760</td>
<td>14.1</td>
</tr>
<tr>
<td>No Response</td>
<td>310</td>
<td>5.7</td>
</tr>
</tbody>
</table>

We will provide six weeks of paid leave to comply with the San Francisco Paid Parental Leave Ordinance as follows:

- We will “integrate” benefits with the state, meaning we will pay the employee the remainder of the employee’s normal wages after the California Paid Family Leave Program benefit. 4460 82.7
- We will provide six weeks of fully employer-paid wages and the employee will receive no state benefit. 454 8.4
- No response                                                                 480 8.9

Will you require employees to use two weeks of vacation prior to taking California Paid Family Leave?

- Yes                                                                          1394 25.8
- No                                                                           2826 52.4
- No response                                                                  1174 21.8


*What is Working?*

Overall, stakeholders reported a positive impression of early implementation efforts. Several stakeholders representing labor groups and government expressed surprise at the lack of opposition from the business community, which they credited to early outreach efforts. Government stakeholders convened meetings early on where business groups were given an opportunity to inform the policymaking process and offer amendments. This provided OLSE with
a solid foundation in what the concerns and points of confusion might be before they started writing rules for enforcement.

_The lack of opposition was kind of amazing. There was never a “we can’t do this”; only “these are things to change.”_

**Attorney, Labor Advocacy Group**

_Never wholesale strong opposition but concerns from small business community about what this meant to them from a labor cost perspective and ability to manage requirements; from larger employers, it was more about compliance with local and state requirements. Opposition was not to the policy overall from an objectives perspective, but more focused on what it meant from a cost and implementation perspective. We did work through the legislative process to ameliorate these concerns. This is why the phase-in was added at the end (to give smaller businesses more time to adjust)._**

**Aide to a San Francisco Supervisor**

Stakeholders reported a perception of overall good awareness of the policy among large employers, but some limitations among smaller employers. OLSE counted a significant increase in the number of phone calls and emails from employers between April 2016 when the PPLO passed and June 2017, but report few complaints about the Ordinance (Figure 3). They commented that most employers seemed to accept the objective of the policy.

![Figure 3: PPLO-related calls to OLSE (through 6/14/17).](image)

Source: OLSE
Challenges

Stakeholders identified several challenges with early implementation of the PPLO that they were working to address. These issues related especially to calculation of the amount that the employer owes, and challenges in harmonizing with the California PFL program.

- **Base period for benefits calculation**: The State and San Francisco use different base periods as the basis for benefits calculations. The State calculates benefits based on past earnings, not current, which for some employees includes wages from a past employer.

- **Multiple employers**: If an employee works for more than one employer, each employer must know how much the employee earned from the other employer in order to calculate the compensation owed. This can be awkward, time-consuming, and bring up privacy issues.

- **Tipped workers**: The State calculates any reported tips as wages so an employee gets 55% inclusive of tips. Under the PPLO, employers who have tipped workers aren’t responsible for what they don’t actually pay (i.e., tips). Employer has to know what tips an employee makes and then remove those tips (from the state benefit calculation) to calculate what the actual weekly benefit amount should be that the employer must pay. This also implies that tipped workers will not receive 100% of their prior earnings.

- **Delays receiving benefits**: There were early concerns that when an applicant for State benefits indicates that they will be receiving additional benefits from their employer (i.e., through the PPLO), their state PFL application could be delayed. We have not heard any confirmation of this occurring beyond a few anecdotal accounts. This potential challenge may have been averted.

These issues result both from a system that was designed to integrate with an existing statewide program and from the diversity of employment situations that exist.

*What seems very simple, like “You get 55% from the state so your employer gives you 45%” is easy in a very typical situation, but there are lots of atypical scenarios.*

Employee, Local Government Department

Stakeholders reported that these were not issues that could have been easily prevented, as the PPLO was designed to integrate with the State program. Stakeholders reported working with the California EDD to identify places that they could improve their system to better work with PPLO (e.g., clearer labeling on forms).

Another challenge is increasing awareness among individuals and small employers. While many in San Francisco have a general awareness of the PPLO, explaining the details has been difficult. This issue is expected to increase as smaller businesses (20-34 employees) become covered on January 1, 2018.

*The PPLO has received a lot of media attention so people are generally aware that San Francisco passed something, but don’t know what it does or how it works.*

Attorney, Labor Advocacy Group
Outreach Efforts

Several stakeholder groups reported efforts to address challenges and increase awareness among employers and employees. OLSE contracted with Legal Aid at Work to engage in outreach efforts. As of Summer 2017, Legal Aid At Work has held three webinars targeting employers, each attended by 200 to 600 participants, as well as in-person trainings for businesses and other organizations. They noted that each outreach event includes partner organizations, including the Department of Labor Women’s Bureau, Small Business Majority, Start with LUCY, Small Business Administration, Women’s Leadership Conference, Bay Area Council, and the San Francisco Department on the Status of Women. They plan to conduct additional outreach targeting smaller employers as the PPLO phases-in to cover employers with 20-34 employees in January 2018. Additionally, outreach efforts will target restaurants and other businesses who employ tipped workers in order to focus trainings on those challenges.

Legal Aid at Work developed a calculator (currently in Excel, soon available online) to help employers determine the Supplemental Compensation required under the PPLO. Employers enter their employees’ normal weekly wage and PFL weekly benefit amount and the calculator provides both the weekly amount owed to the employee as well as the total amount owed if the employee takes the full six weeks of PFL. The calculator works for both tipped and non-tipped employees and those with single or multiple employers.

Stakeholder groups are engaged in parallel efforts to raise awareness among employees in San Francisco. Legal Aid at Work has held in-person trainings for employees in partnership with La Clinica de La Raza, San Francisco Family Support Network, and the California Work & Family Coalition.

Through ongoing medical-legal partnerships with the Zuckerberg San Francisco General (ZSFG) hospital and the Comprehensive Perinatal Services Program (CPSP), which serves MediCal-covered pregnant women, Legal Aid at Work conducts trainings for healthcare providers on workplace rights and has integrated information about the PPLO and related state and local laws. They provide technical assistance to social workers and healthcare providers to increase their capacity to follow up with patients who report employment-related concerns, as well as training them how to help patients complete PPLO forms. For example, the ZSFG Health Advocates Program screens patients in the Women’s Health Center for legal-related issues, including employment concerns like getting paid and taking time off work, and women who identify employment or legal concerns are referred to Legal Aid at Work. Thus this medical-legal partnership infrastructure has been a major element of outreach to individuals in San Francisco.

However, one stakeholder warned that this strategy may be hard to replicate in other cities that do not have a large population of corporate lawyers with a tradition of providing services *pro bono*. Other strategies for identifying and assisting individuals with employment-related concerns could include adding questions to state Medicaid prenatal screening forms or opening a statewide helpline, similar to a smokers’ helpline, but it is unclear how effective those would be in comparison to the outreach that has been possible in San Francisco.
5. Early employer perceptions

In July and August of 2017, we conducted one-on-one in-depth phone interviews with representatives from 12 San Francisco employers. Interview respondents were knowledgeable about their employer’s attitudes and practices towards parental leave (i.e. human resources coordinators or general managers). Respondents were asked to characterize the parental leave policy at their firm, and to discuss the impact of the PPLO – either positive or negative – on both employees and their employer.

**Employer Characteristics**

The firms were chosen to represent a diverse set of firm sizes, industries, and potential perspectives. Nine of the 12 firms were covered under SF PPLO at the time of the interview; the three smallest firms will be covered effective January 1, 2018. The employers represent a variety of industries – including retail, service, staffing, e-commerce, public relations, and education – and range in size from 20 employees to over 3,000. Only two of the 12 firms had offered supplemental wage replacement for parental leave prior to implementation of the PPLO. Many employers initially reported that they had offered paid leave prior to PPLO, but on further questioning were in fact referring either to payments made to employees by state disability insurance (SDI) or to the use of accrued sick days or vacation time for the purposes of parental leave.

**Employers’ Knowledge of PPLO**

All but one respondent reported that they were familiar with the PPLO. However, our interviews suggest that employers’ knowledge of PPLO is variable. For example, many employers were unaware that the ordinance applies not only to new mothers, but also to fathers and other non-birth parents. One respondent from a small public relations firm was unsure how the ordinance would impact their existing paid leave policy, which was a tiered system that offered more senior employees more generous leave policies. Respondents also expressed uncertainty regarding wage calculations for temporary and part-time workers, and for workers whose wages fluctuate substantially from week-to-week (i.e. service industry employees), reinforcing the challenges identified by stakeholders. One human resources manager from a medium-sized grocery retail outlet reported that while her employer was prepared to offer supplemental wage replacement under PPLO, none of the employees eligible for paid parental leave had successfully filed the paperwork to receive SDI or PPLO.

*Another question is … are both parents entitled to the parental leave? Or…how does it work?*

**Marketing Manager, Professional Cleaning Service**

*That’s one thing that I need to talk to the city about because I know it’s specifically service industry … so the weekly wage is gonna fluctuate, obviously. For instance what a person’s making on paper versus plus tips. So I’m not sure what their suggestion is on that but I will find out.*

**General Manager, Restaurant**
So far no one has finished all the paperwork to get the SF PPLO. Which I find...strange. Especially since we were super clear about what we need, as is the EDD. And our employees are service industry employees, so a lot of them are working with the very knowledgeable professionals who are helping them with all their medical stuff, and those people are also helping and advising them on how to do the paperwork and what to do, but I still haven’t gotten any yet.

Human Resources Manager, Grocery Store

Perceived Impact on Employees

Overall, employer respondents agreed that the ordinance would have a positive effect on their workforce. Many respondents felt it was important to provide financial support and protected time for their employees to bond with a newly arrived child. Some employers also noted that their employer had been considering a paid leave policy prior to PPLO, and that the Ordinance served as the impetus to roll out paid leave for their workers.

It's been great, yeah. It's actually been good. We had been looking into somehow providing more benefits; specifically you know, maternity disability. Because that is the norm. The norm was going that way and so we just hadn't really gotten our act together to pull together a policy and this, essentially, helped us get there. So we're really making our employees whole. And we feel good about that.

Human Resources Manager, Staffing Firm

Respondents’ perspectives regarding the impact of the PPLO on employee morale were mixed. While some respondents felt that PPLO would have a positive effect on employee morale, others felt that there was not enough awareness of PPLO within their workforce or that the ordinance would affect too small of a subset of workers to improve morale. One respondent, the co-owner of a small pharmacy, suggested that the PPLO could perhaps be a detriment to morale at least initially, because it focuses only on new parents and will detract from potential benefit spending that could have helped other employees.

And a lot of people come to me and they know about it already. They're very excited and some people are just blown away, they can't believe it.

Leave of Absence Manager, Private University

And I would say even within the realm of parents, I was just talking with an employee the other day who has two kids who are school-aged and she was saying, “Oh, I'm so bummed that this policy came into place after I had my kids and I really need help finding a place for them to go during the summer when they're out of school and I don't have daycare.” and, so, even for parents, it's not applied equally.

Co-Owner, Pharmacy

Many respondents felt the ordinance would have little or no effect on employee retention, explaining the greatest financial constraint their workers face is the high cost of living in the Bay Area. We asked all respondents whether they felt that the ordinance would change hiring practices at their firm. Nearly all respondents reported that their employer would not change
hiring practices in response to the ordinance, however most respondents speculated that the ordinance may encourage other employers to discriminate against women of reproductive age.

I think to some degree, you know I think that the biggest challenge that we have because we’re located in San Francisco it’s just a really high cost area and so it will help to a degree, but our largest challenges are trying to pay competitive wages to employees.

Chief Financial Officer, Membership-Oriented Non-Profit

I probably will not go through this often enough where it’s gonna be such an issue, but, you know, discrimination’s everywhere. Yeah. Yes, it will happen.

General Manager, Restaurant

Impact on Employers

Both very small and large employers asserted that it would not be difficult to comply with PPLO administratively, though some were unhappy about increased bureaucratic paperwork.

I think it’s just time-consuming for somebody who does the paperwork, which is me. Basically every ordinance means more paperwork, more record-keeping, and more complying as in documenting and proving to the city that you’re complying with the ordinance. So, as great as they are and definitely need them and it’s great that we’re doing it it’s just a lot…because they’re all different.

General Manager, Restaurant

Many of the employers indicated that their biggest concern with the PPLO was the new cost of paying 45% of wages during a six week leave, although almost all indicated that this cost was manageable. Respondents at small and medium-sized firms seemed most concerned with the cost of the Ordinance (we did not interview employers with fewer than 20 employees, as these small firms are exempted from the Ordinance). Many of these respondents additionally asserted that the Ordinance disadvantages smaller businesses (for whom a single employee’s leave will constitute a greater share of payroll) and businesses in industries with narrow profit margins. Although no respondents anticipated having to reduce benefits, raises, or bonuses to pay for the Ordinance, some did note that it would forestall the provision of additional benefits. Some respondents expressed frustration with the fact that employers are responsible for wage replacement under PPLO, and would have preferred that the ordinance were funded through a city-wide tax.

We are parents ourselves. We really believe in the importance of baby bonding and spending time with your young children… finding affordable daycare and child care and all of those things we really support, but we would much prefer to see it on a broad-based small tax that everybody would contribute to a small amount and have it be able to be drawn upon rather than, again, having it be said to the businesses, “You solve this problem. You’re gonna take up the rest of what we haven’t managed to cover in terms of our state policy.”

Co-Owner, Pharmacy
Many respondents noted that while the financial burden and transaction costs imposed by PPLO alone are not unduly burdensome, the various city, state, and federal ordinances that San Francisco businesses are required to comply with collectively create substantial work and confusion for employers.

_We have to add into account that there might be other ordinances and fees and things like that and that might make it harder for a business not just to pay bills and just keep going, but that’s the bigger picture, you know. There’s many other factors and laws that have to be followed._

Marketing Manager, Professional Cleaning Service

### 6. Potential costs to employers

To better interpret employer perspectives on PPLO costs, in Table 4 we calculate examples of how much employers are being mandated to pay in different scenarios. The actual costs depend on specific circumstances, so Table 4 depicts various extreme cases to illustrate the range of costs.

For example, column (1) shows an upper bound example: an employee in 2018 earning the maximum eligible salary (approximately $2209/week in 2018, which translates to $55/hour for a full-time worker). Over six weeks of leave that results in total pay of $13,254. At the 2018 state PFL replacement rate of 60%, the employer will be responsible for 40% of this amount, or $5,302. This is an extreme upper bound, but would nevertheless be a substantial new cost for the employer. We note though that for the average firm the cost of this will be only a small percentage of payroll, since on average fewer than 2% of workers are expected to take leave in any given year. If 1 out of 50 workers paid at this $55/hour wage takes leave in a year, this averages out to a cost of 0.09% of payroll, or the equivalent of raising compensation for all of these workers by $0.05/hour. However, with an employer mandate (as opposed to a payroll tax of the type that funds PFL), this cost may in actuality fall differentially across firms, with some more likely to hire workers of childbearing age. Furthermore, smaller firms will have more variability across years in the percent of their employees taking leave at any given time, and thus may perceive greater burden.

The potential cost to employers may be reduced though to the extent that they take advantage of two provisions in the state and local laws. The CA PFL law allows employers to require an employee to use up to two weeks of accrued vacation before PFL begins. The PPLO further allows employers to apply up to two weeks of the employee’s accrued but unused vacation to offset the cost to them of the supplemental wage replacement. Hence, our estimates provide an upper bound of what employers may actually be required to pay.

At the other extreme of the cost distribution are firms hiring minimum wage workers. The San Francisco minimum wage is phasing-up to $15/hour as of July 1, 2018, thus column (2) shows similar calculations for a full-time worker earning $15/hour, for whom the employer cost of the PPLO-mandated leave pay will be $1,440 in 2018. For the average firm this is equivalent to
raising the minimum wage workers’ wages by only $0.01/hour (0.09% of payroll), though again this cost will be distributed unevenly across firms.

Finally, starting in 2018 the state PFL contribution will rise to 70% replacement rate for workers earning up to one-third of the statewide weekly average wage, which at a $15 minimum wage is equivalent to a part-time worker with less than 26.8 hours per week (i.e. earning up to $402/week). The employer’s cost for this worker’s leave will be $723.60, which for the average firm would by 0.05% of payroll, equivalent to an average raise of $0.01 for these minimum wage workers. As described in the previous section, however, different firms will have different perceptions of the extent to which these amounts are a burdensome mandate or instead a benefit cost that they are willing to absorb (especially if their local competitors are paying for a similar benefit).

Table 4: Examples of 2018 estimated employer costs for 6-week bonding leave

<table>
<thead>
<tr>
<th>Employee at maximum eligible salary ($2209/week)$^{1}$</th>
<th>Full-time employee at SF Minimum Wage$^{2}$</th>
<th>Part-time employee at SF Minimum Wage$^{3}$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assumed hours/week</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Wage ($/hour)</td>
<td>55.23</td>
<td>15</td>
</tr>
<tr>
<td>Total salary over 6 week leave</td>
<td>$13,254</td>
<td>$3,600</td>
</tr>
<tr>
<td>Employer’s responsibility (replacement rate)</td>
<td>40%</td>
<td>40%</td>
</tr>
<tr>
<td>Employer cost</td>
<td>$5,301.60</td>
<td>$1,440.00</td>
</tr>
<tr>
<td>Total annual payroll for 50 full-time employees at this wage level</td>
<td>$5,743,400.00</td>
<td>$1,560,000.00</td>
</tr>
<tr>
<td>Leave cost as % of total payroll$^{4}$</td>
<td>0.09%</td>
<td>0.09%</td>
</tr>
<tr>
<td>Leave cost/hour, spread across all employees</td>
<td>$0.05</td>
<td>$0.01</td>
</tr>
</tbody>
</table>

Notes:

1 Maximum salary at which benefits are capped is projected to be $2209/week in 2018.

2 SF Minimum wage will be $15/hour as of 7/1/18.

3 Beginning 1/1/18, California AB908 will increase the state replacement rate to 70% for workers earning up to 1/3 of the statewide average weekly wage (SAWW), thus reducing employer responsibility to 30% for those workers. The 2018 California SAWW is projected to be $1207, 1/3 of which is $402. At the minimum wage of $15/hour that is equivalent to working 26.8 hours/week, or 67% of a 40-hour week.

4 Assuming one out of 50 employees takes bonding leave per year.
7. Discussion of early findings

Although the San Francisco PPLO is still in its first year, our assessment of early implementation suggests several findings.

- The PPLO is acceptable to most employers and other stakeholder groups. Mandating employers to contribute partial pay during parental leave appears broadly acceptable across stakeholder groups, at least in a generally wealthy and politically liberal city such as San Francisco. This has been aided by a pre-existing coalition of stakeholders that has helped with consultation and communication outreach.

- The mandate has been feasible to implement. This has been facilitated by a strong supporting infrastructure of city agencies and nonprofit assistance groups, as well as an existing state agency that already tracks wages and PFL benefit eligibility. Starting a local program without this infrastructure would be considerably more challenging.

- Integrating the PPLO with existing state programs has made it complex and sometimes confusing, despite outreach efforts. The mandate required many nuanced rules to address the wide variety of employer-employee relationships, but this complexity causes both confusion and frustration. When a local program such as this is also integrated with the separate complex bureaucracy inherent to the state PFL program, the result is even more complexity and confusion. This is despite the substantial effort and funds that the city dedicated to outreach, without which implementation would have likely been problematic. There are some signs that the overall complexity may inhibit the ability of parents to claim paid leave, but further work will be necessary to quantify the extent to which that may be occurring, and to understand how to mitigate it.

- The cost to employers is minimal on average, but falls unevenly across employers. When layered on top of the state PFL program, the 30-45% replacement rate that employers are mandated to pay is generally perceived as manageable—on average. If 2% of employees take bonding leave in any given year, then this is equivalent to raising wages by $0.01/hour for minimum wage employees, up to $0.05/hour for highly paid employees at the earnings cap. However, the incidence of the actual costs falls unevenly across employers, and if a smaller employer has multiple claimants in a year then that can add up to a substantial cost. Some interviewees debated whether an increased payroll tax would be a fairer way to distribute the social costs of fully paid parental bonding leave.

- Preliminary data indicate that leave-taking has increased more among fathers than among mothers in San Francisco. In the first six months of implementation, the biggest increase in bonding leave claimants was not among mothers, but among fathers. Further research would be helpful to understand the family benefits of this, as well as whether this is a pattern that will continue in San Francisco and in similar programs elsewhere. Our future analyses will also examine the duration of claims to examine the extent to which mothers are extending their existing leaves now that they are fully paid, as well as the extent to which the PPLO is achieving the goal of increasing leaves among low-income parents.
References


