Motion ordering submitted to the voters an Ordinance amending the Administrative Code to allow San Francisco based employees who are caregivers to request flexible working arrangements, subject to the employer’s right to deny a request based on specified undue hardship; require that employers give advance notice of changes in an employee’s work schedule; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings, to the voters of the San Francisco at an election to be held on November 5, 2013.

MOVED, That the Board of Supervisors hereby submits the following ordinance to the voters of the City and County of San Francisco, at an election to be held on November 5, 2013.

Ordinance amending the Administrative Code to: allow San Francisco-based employees who are caregivers to request flexible working arrangements, subject to the employer’s right to deny a request based on specified undue hardship; require that employers give advance notice of changes in an employee’s work schedule; prohibit
adverse employment actions based on caregiver status; prohibit interference with
rights or retaliation against employees for exercising rights under the Ordinance;
require employers to post a notice informing employees of their rights under the
Ordinance; require employers to maintain records regarding compliance with the
Ordinance; authorize enforcement by the Office of Labor Standards Enforcement,
including the imposition of remedies and penalties for a violation, and an appeal
process to an independent hearing officer; authorize waiver of the provisions of the
Ordinance in a collective bargaining agreement; and making environmental findings.

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through italics Times New Roman.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental Findings. The Planning Department has determined that the
actions contemplated in this ordinance comply with the California Environmental Quality Act
(California Public Resources Code Sections 21000 et seq.). Said determination is on file with
the Clerk of the Board of Supervisors in File No. ___ and is incorporated herein by reference.

Section 2. The San Francisco Administrative Code is hereby amended by adding
Chapter 12Z to read as follows:

SEC. 12Z.1. TITLE.
This Chapter shall be known as the “San Francisco Family Friendly Workplace Ordinance.”

SEC. 12Z.3. DEFINITIONS.
For purposes of this Chapter, the following definitions apply.

"Agency" shall mean the Office of Labor Standards Enforcement or any successor department
or office.

"Caregiver" means an Employee who is a primary contributor to the ongoing care of either of
the following:

Supervisors Chiu, Cohen and Mar
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(1) A child or children for whom the person has assumed parental responsibility.

(2) A person or persons with a serious medical condition in a legally dependent relationship with the caregiver.

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

"Child care emergency" means a situation in which a parent's usual child care becomes unavailable unexpectedly and on short notice and a Caregiver must miss work to provide care until the child care is restored or the Caregiver finds alternate child care.

"City" means the City and County of San Francisco.

"Dependent relationship" means the relationship of a Caregiver to a person who is related by blood, legal custody, marriage, or to his or her domestic partner, as defined in San Francisco Administrative Code Chapter 62 or California Family Code Section 297, or to a person with whom the caregiver lives in a familial relationship.

"Director" means the Director of the Office of Labor Standards Enforcement or his or her designee.

"Employee" means any person who is employed within the geographic boundaries of the City by an employer, including part-time and temporary employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and any applicable U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS, and any successor programs that are substantially similar, that require a public assistance applicant or recipient to work in exchange for their grant.

"Employer" means the City, or any person as defined in Section 18 of the California Labor Code who regularly employs 10 or more Employees, including an agent of that Employer, or corporate
officers or executives who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employ or exercise control over the wages, hours, or working conditions of an employee. The term “Employer” shall also include any successor in interest of an Employer. The term “Employer” shall not include the state or federal government or any local government entity other than the City.

“Flexible Working Arrangement” means a change in an Employee’s terms and conditions of employment that assist a Caregiver with caregiving responsibilities. A Flexible Working Arrangement may include but is not limited to, part-time employment, a modified work schedule, flexible start and/or end times for work, job sharing arrangements, working from home, telecommuting, reduction in work duties, and part-year employment.

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(1) Inpatient care in a hospital, hospice, or residential health care facility.

(2) Continuing treatment or continuing supervision by a health care provider.

“Work schedule” means those days and times within a work period that an employee is required by an Employer to perform the duties of his or her employment for which he or she will receive compensation.

SEC. 12Z.4. RIGHT TO REQUEST FLEXIBLE WORKING ARRANGEMENT.

(a) An Employee who is a Caregiver and has been employed with an Employer for six months or more may request a Flexible Working Arrangement, including but not limited to a change in the Employee’s terms and conditions of employment as they relate to:

(1) The number of hours the employee is required to work;

(2) The times when the employee is required to work;

(3) Where the employee is required to work; or
(4) Work assignments or other factors.

(b) Any application submitted to the employer under this section shall be in writing and:

(1) Specify the change applied for, the date on which the employee requests that the change becomes effective, and the duration of the change; and

(2) Explain what effect, if any, the employee thinks the change applied for would have on the Employer and how any such effect may be dealt with.

(c) An Employer may require verification of Caregiver status as part of the request.

(d) An Employee may make the initial request verbally, after which the Employer must notify the Employee of the requirements of this section and instruct the Employee to prepare a written request under subsection (b).

SEC. 12Z.5. RESPONSE TO REQUEST FOR FLEXIBLE WORKING ARRANGEMENT.

(a) An Employer to whom an Employee submits an application under Section 12Z.4 must meet with an Employee requesting a Flexible Working Arrangement within 14 days of the request. The Employee may bring a coworker employed by the same Employer or a representative to the meeting.

(b) An Employer must consider and respond to an Employee’s request for a Flexible Working Arrangement in writing within 14 days of the meeting required in subsection (a). The deadline in this Section may be extended with an agreement with the Employee confirmed in writing.

(c) An Employer may deny a request for Flexible Working Arrangement if it would cause an undue hardship, which may include but is not limited to the following business reasons:

(1) The identifiable cost of the change in a term or condition of employment requested in the application, including the cost of productivity loss, retraining or hiring employees, or transferring employees from one facility to another facility.

(2) Detrimental effect on ability to meet customer or client demands.

(3) Inability to organize work among other employees.
(4) Insufficiency of work to be performed during the time the employee proposes to work.

(d) A Flexible Working Arrangement shall not require an Employer to grant a schedule that includes overtime unless the Employer and Employee agree to such an arrangement.

(e) A Flexible Working Arrangement shall not excuse an Employee from the duty to satisfactorily perform Employee’s job duties.

(f) An Employer must explain in the denial letter how the business reason relied upon applies to the individual circumstances of the Employee who requested a Flexible Working Arrangement. The denial letter shall notify the Employee of the right to appeal under Section 12Z.6 and include a copy of the text of that Section.

(g) An Employer who grants a Flexible Working Arrangement to an Employee may:

(1) place reasonable limits on the duration of the arrangement; and

(2) modify or revoke the arrangement based on undue hardship(s) after 14 day’s written notice describing the proposed modification or revocation and identifying the undue hardship(s) and how such hardship(s) apply to the Employee’s individual circumstances.

The appeal process described in Section 12Z.6 shall apply to such modification or revocation. Nothing in this subsection is intended to prevent an Employee from applying for another Flexible Working Arrangement after the expiration or revocation of the Employee’s arrangement.

SEC. 12Z.6. APPEAL FROM THE DENIAL OF REQUEST FOR FLEXIBLE WORKING ARRANGEMENT.

(a) An Employee whose request for Flexible Working Arrangement has been denied may appeal to the Employer in writing within 30 days of the decision.

(b) If an Employee submits an appeal pursuant to this Section, the Employer must arrange an appeal meeting to take place within 14 days after receiving the notice of appeal, and the Employee may be accompanied by a coworker or representative.
(c) The Employer must inform the Employee of the outcome of the appeal in writing within 14 days after the appeal meeting. If the appeal is denied, this notice must explain the Employer’s reasons for the denial.

(d) The Employee must appeal a denial of a request for Flexible Working Arrangement to the Employer before submitting a complaint to the Agency alleging a violation of this Chapter.

SEC. 12Z.7. OTHER EMPLOYER DUTIES.

(a) Duty to Interact. An Employer has an ongoing duty to interact upon request with the Employee who has been granted a Flexible Working Arrangement to ensure that the Employee’s assignments and duties reasonably can be completed within the parameters of the Flexible Working Arrangement.

(b) Predictability in Scheduling. Employers with Employees subject to the overtime requirements of state or federal law must provide such Employees at least two weeks notice of Work Schedules. Nothing in this section shall be construed to prevent an Employer from offering a consenting Employee additional hours of work or to require an Employer to pay an Employee for time not worked.

SEC. 12Z.8. EXERCISE OF RIGHTS AND CAREGIVER STATUS PROTECTED: RETALIATION PROHIBITED.

(a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

(b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote, suspend, or otherwise take adverse employment action against any person on the basis of Caregiver status or in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to:
(1) the right to request a Flexible Working Arrangement under this Chapter;
(2) the right to appeal the denial of a request for a Flexible Working Arrangement under this Chapter;
(3) the right to file a complaint with the Agency alleging a violation of any provision of this Chapter;
(4) the right to inform any person about an employer's alleged violation of this Chapter;
(5) the right to cooperate with the Agency or other persons in the investigation or prosecution of any alleged violation of this Chapter;
(6) the right to oppose any policy, practice, or act that is unlawful under this Chapter; or
(7) the right to inform any person of his or her rights under this Chapter.

(c) Protections of this Section shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

(d) Taking adverse employment action against a person within 90 days of the exercise of one or more of the rights described in Section 12Z.8(b) shall create a rebuttable presumption that such adverse action was taken in retaliation for the exercise of those rights.

SEC. 12Z.9. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.
(a) The Agency shall, by the operative date of this Chapter, publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by employers in the workplace informing employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the notice required herein with the notice required by Section 12R.5(a) and/or 12W.5(a) of the Administrative Code.
(b) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice required by subsection (a). Every employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

SEC. 12Z.10. EMPLOYER RECORDS.

Employers shall retain documentation required under this Chapter for a period of four years from the date of the request, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to an alleged violation of an Employee’s rights under this Chapter, if the Employer has failed to maintain or retain documentation required under this Chapter, or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer has violated this Chapter, absent clear and convincing evidence otherwise.

SEC. 12Z.11. IMPLEMENTATION AND ENFORCEMENT.

(a) Administrative Enforcement.

(1) The Agency is authorized to take appropriate steps to enforce this Chapter and coordinate enforcement of this Chapter. The Agency may investigate possible violations of this Chapter. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

(2) Where the Agency determines that a violation has occurred, it may issue a determination and order any appropriate relief including, but not limited to, ordering legal and equitable relief as identified in Section 12Z.11(b), and a Flexible Working Arrangement. If a request for Flexible Working Arrangement was unlawfully denied and the denial resulted in harm to the
Employee or any other person, such as discharge from employment, or otherwise violated the rights of Employees, such as a failure to post the notice required by Section 12Z.9, or an act of retaliation or other adverse employment action prohibited by Section 12Z.8, the Agency may impose an administrative penalty up to $50.00 to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

(3) Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12Z.11(b) and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than $50.00 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the costs of implementing and enforcing this Chapter.

(4) An Employee or other person may report to the agency any suspected violation of this Chapter. The Agency 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 Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(5) In accordance with the procedures described in Section 12Z.14, the Director shall establish rules governing the administrative process for determining and appealing violations of this Chapter. The rules shall include procedures for:
(A) providing the Employer with notice that it may have violated this Chapter;
(B) providing the Employer with a right to respond to the notice;
(C) providing the Employer with notice of the Agency’s determination of a violation:
(D) providing the Employer with an opportunity to appeal the Agency’s determination to a hearing officer, not employed by the Agency, who is appointed by the City Controller or his or her designee.

(6) If there is no appeal of the Agency’s determination of a violation, that determination shall constitute the City’s final decision. An Employer’s failure to appeal the Agency’s determination of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the City regarding the Agency’s determination of a violation.

(7) If there is an appeal of the Agency’s determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the Agency’s determination of a violation shall be considered prima facie evidence of a violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that the Agency’s determination of a violation is incorrect. The hearing officer’s decision of the appeal shall constitute the City’s final decision. The sole means of review of the City’s final decision, rendered by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the Employer of this right of review after issuance of the City’s final decision by the hearing officer.

(b) Civil Enforcement. The City 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 entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an
additional sum as liquidated damages in the amount of $50.00 to each Employee or person whose 
rights under this Chapter were violated for day such violation continued or was permitted to continue; 
appropriate injunctive relief; and, further, shall be awarded reasonable attorneys’ fees and costs.

(c) Interest. In any administrative or civil action brought under this Chapter, the Agency or 
court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest 
specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) Remedies Cumulative. The remedies, penalties, and procedures provided under this 
Chapter are cumulative.

SEC. 12Z.12. WAIVER THROUGH COLLECTIVE BARGAINING.
All and any portions of the applicable requirements of this Chapter shall not apply to 
Employees covered by a bona fide collective bargaining agreement to the extent that such requirements 
are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

SEC. 12Z.13. OTHER LEGAL REQUIREMENTS.
This Chapter provides minimum employment requirements pertaining to Caregivers and 
Employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any 
other law, regulation, requirement, policy, or standard, or provision of a collective bargaining 
agreement, that provides for greater or other rights of or protections for Caregivers or Employees, or 
that extends other rights or protections to employees.

SEC. 12Z.14. RULEMAKING AUTHORITY.
The Director shall have authority to issue regulations or develop guidelines that implement 
provisions of this Chapter. Notwithstanding the definition of “Director” in this Chapter, a designee of
the Director shall not have authority under the foregoing sentence of this Section; but a designee of the Director shall have authority to conduct hearings leading to the adoption of regulations or guidelines.

SEC. 12Z.15. OPERATIVE DATE.
This Chapter shall become operative on July 1, 2014 and shall have prospective effect only.

SEC. 12Z.16. PREEMPTION.
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.

SEC. 12Z.17. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.
In enacting and implementing this Chapter, the City is assuming an undertaking only to promote the general welfare. The City 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. This Chapter does not create a legally enforceable right against the City.

SEC. 12Z.18. AMENDMENT BY THE BOARD OF SUPERVISORS
The Board of Supervisors may amend this Chapter by a two-thirds vote of its members in order to (1) facilitate its implementation or enforcement, (2) increase its substantive requirements, (3) expand the scope of its coverage, or (4) make technical, nonsubstantive changes.

SEC. 12Z.19. SEVERABILITY.
If any of the parts or provisions of this Chapter (including sections, subsections, sentences, clauses, phrases, words, numbers) or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this Chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Elizabeth Salveson
Chief Labor Attorney

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LEGISLATIVE DIGEST

[San Francisco Family Friendly Workplace Ordinance]

Ordinance amending the Administrative Code to: allow San Francisco-based employees who are caregivers to request flexible working arrangements, subject to the employer's right to deny a request based on specified undue hardship; require that employers give advance notice of changes in an employee's work schedule; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings.

Existing Law

Existing ordinances address certain employee rights and protections; for example, the Minimum Wage Ordinance (Administrative Code Chapter 12R), Paid Sick Leave Ordinance (Administrative Code Chapter 12W), and Health Care Security Ordinance (Administrative Code Chapter 14). But no ordinance addresses flexible working arrangements. California and federal laws require some employers to grant leave to an employee to care for children, or for parents, spouses, or children with serious health conditions, but are limited to employers with 50 or more employees, require employment of at least a year before leave may be taken, provide a 12 week annual maximum for the leave, and do not include requirements for other flexible working arrangements. See Cal. Gov't Code Section 12945.2 (California Family Rights Act) and 29 U.S.C. Sections 2601-2619 (Family and Medical Leave Act).

Amendments to Current Law

The Family Friendly Workplace Ordinance ("Ordinance") applies to Employees—persons who are employed in San Francisco—by an Employer that employs 10 or more Employees. An Employee who is a "primary contributor to the ongoing care of" a child under 18 years of age, or of a dependent with a serious medical condition—defined as a Caregiver—may request a Flexible Working Arrangement, which will assist the Employee in carrying out caregiving responsibilities. An Employee must be employed for at least 6 months before requesting a Flexible Working Arrangement. A Dependent is a person who is related to the Caregiver by blood, legal custody, marriage, or to a domestic partner, or to a person with whom the Caregiver lives in a familial relationship.
Caregivers may seek from Employers changes in the terms and conditions of their employment that include, but are not limited to, “part-time employment, a modified work schedule, flexible start and/or end times for work, job sharing arrangements, working from home, telecommuting, reduction in work duties, and part-year employment.”

An Employer who receives a request for a Flexible Working Arrangement may deny the request based on undue hardship. Undue hardship may include, but is not limited to, certain business reasons, such as identifiable cost of the arrangement, detrimental effect on the Employer’s ability to meet customer or client demands, inability to organize work among other employees, or insufficiency of work to be performed during the time the Employee proposes to work. Absent undue hardship, the Employer must grant the request.

The Ordinance establishes a process through which the Caregiver receives the Employer’s response and may appeal the denial of a request to the Employer. During the process the Employer must supply written reasons for denial of the request.

The Ordinance also requires Employers to give at least two weeks notice of change of an Employee’s Work Schedule. A Work Schedule is defined as “those days and times within a work period that an Employee is required by an Employer to perform the duties of his or her employment for which he will receive compensation.” This provision is intended to apply only with respect to Employees who are subject to the overtime requirements of state or federal law.

The Ordinance protects Employees from interference with their rights under the Ordinance, and makes it unlawful for an Employer to take adverse employment action against a person because he or she is a Caregiver, or in retaliation for exercising his or her rights under the Ordinance.

Employers must post a notice at the workplace informing Employees of their rights under the Ordinance. Employers must also create and maintain certain records required by the Ordinance to document requests by Caregivers for a Flexible Working Arrangement, and the response to those requests.

The City’s Office of Labor Standards Enforcement is designated as the Agency to implement and enforce the Ordinance. The Agency may investigate compliance with the Ordinance, make a determination that the Ordinance has been violated, and award appropriate relief. The Agency also may assess penalties in the case of certain types of violation. The Employer or other violator may appeal the Agency’s determination to a neutral hearing officer. The Agency may also bring a civil action to enforce the Ordinance. There is no private right of action under the Ordinance.

The Director of the Agency has authority to issue regulations or develop guidelines to implement the Ordinance. The Director also must establish rules governing the administrative process for determining and appealing violations of the Ordinance.

All or any portion of the Ordinance may be expressly waived in a collective bargaining agreement.

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BOARD OF SUPERVISORS

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