

1) General Questions

a. What is the San Francisco Paid Parental Leave Ordinance?

The San Francisco Paid Parental Leave Ordinance (SF PPLO) requires employers who have employees working inside the geographical boundaries of San Francisco to provide Supplemental Compensation to employees who are receiving California Paid Family Leave (CA PFL) benefits to bond with a new child, so that the employees receive 100% of their normal weekly wages, up to a weekly maximum benefit, during six weeks* of parental leave.

NOTE: There are **two different** parental leave benefit laws that employees may access: (1) the CA PFL law, where the benefit is paid by the State of California's Employment Development Department (EDD); and (2) the SF PPLO, where the benefit is paid by the employer. **The employer is required to notify employees about their rights to pursue both of these benefits.** To receive the SF PPLO benefits, an employee must first apply for CA PFL benefits from the EDD, then submit the required SF PPLO documentation to the employee's employer.

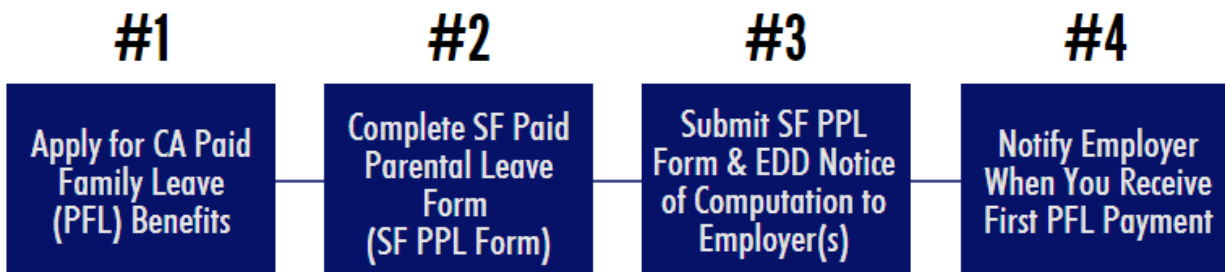
b. How do the two parental leave laws work?

CA PFL is a state benefits program that provides eligible employees with partial wage replacement for up to six weeks* to bond with a newborn, newly adopted child, or foster child. The weekly benefit amount (WBA) is about 60% or 70% (depending on income) of wages earned 5 to 18 months before your claim start date up to a maximum weekly benefit amount. Under the SF PPLO, employers are required to provide employees receiving CA PFL for new child bonding with "Supplemental Compensation" equal to the difference between the employee's CA PFL benefit amount and the employee's normal gross weekly wages such that the employee receives 100% of their weekly wages, subject to a weekly maximum benefit amount, for up to six weeks.*

c. How does an employee apply for Supplemental Compensation under the SF PPLO?

After receiving the PPL form from their employer, the employee must complete **four steps** to receive Supplemental Compensation under the SF PPLO.

4 Steps to Apply for SF Paid Parental Leave



First, the employee must apply for CA PFL benefits **for new child bonding** through the State of California's EDD (note: employees receiving PFL benefits for caregiving for an ill family member are not

* Beginning July 1, 2020 CA PFL will be eight weeks.

eligible for PPLO). Employees can apply using [SDI Online](#) or a paper claim form. For more information on filing a claim for CA PFL benefits, click [here](#) to be directed to the EDD's website.

Second, the employer must provide, and the employee must complete, the **San Francisco Paid Parental Leave Form** (SF PPL Form), which can be found [here](#) or at www.sf.gov/olse-pplo.

Third, the employee must submit the SF PPL Form and provide information on EDD benefits **to each Covered Employer** by doing the following:

(a) providing the EDD Notice of Computation to each Covered Employer(s). Once the employee files a claim for CA PFL, EDD will send the employee a form entitled Notice of Computation (DE429D) which will set forth the employee's weekly CA PFL benefit amount; and

(b) indicating on the SF PPL form (Section 2 Option 2) that they authorize EDD to disclose their weekly benefit amount to the employer(s).

To ensure prompt payment, OLSE **strongly recommends** that employees do both (a) and (b) above.

2) Covered Employers and Covered Employees

a. Which employers are covered?

Answer: Employers that employ 20 or more employees globally.

b. Which employees are counted towards the Threshold Number of Employees when determining whether an employer is covered?

Answer: **All** employees are counted, regardless of where they work and regardless of their status or classification as seasonal, permanent or temporary, full-time or part-time, contracted or otherwise.

c. Are employees at San Francisco International Airport covered by the PPLO?

Answer: No, because the airport is outside the geographic boundaries of the City.

d. Can a governmental entity be a Covered Employer?

Answer: No. This means that government employees are not covered by the SF PPLO (however, those employees may be eligible for CA PFL benefits).

3) Employees covered by the SF PPLO and eligibility

a. Which employees are covered by the SF PPLO?

Answer: Employees who meet all of the following requirements are covered by the SF PPLO and are entitled to receive Supplemental Compensation:

- The employee commenced work for a covered employer(s) at least 180 days before the start of the employee's CA PFL payment period;
- The employee works at least eight hours per week in San Francisco for a covered employer;
- The employee works in San Francisco for at least 40% of their weekly hours for a covered employer; and
- The employee is receiving CA PFL benefits

b. Do the requirements of the SF PPLO apply to employees who are covered by a collective bargaining agreement (CBA)?

Answer: In general, being covered by a CBA does not prevent an employee from being entitled to supplemental compensation. However, the requirements of the SF PPLO do not apply to employees who are covered by a collective bargaining agreement **only** if: (1) the agreement expressly waives the requirements of the SF PPLO; or (2) the agreement was entered into before May 21, 2016 (the effective date of the SF PPLO), unless the agreement was amended or extended after that date.

c. Is a parent who is receiving CA PFL benefits *for “caregiving for an ill family member”* when their partner is recovering from childbirth eligible for supplemental compensation under the SF PPLO?

Answer: No. An employee is only entitled to receive supplemental compensation under the SF PPLO when he or she is receiving CA PFL benefits for ***new child bonding***.

4) Calculating & Making Supplemental Compensation Payments

a. How much Supplemental Compensation must an employer pay an employee under the SF PPLO?

Answer: It depends on the employee’s normal weekly wages and how much they get in PFL benefits. The employer must provide Supplemental Compensation in the amount of the difference between the employee’s normal weekly wage and the CA PFL benefit amount, up to a cap. The 2021 maximum CA PFL benefit is \$1357 per week. Please see detailed calculation instructions [here](#) or visit www.sf.gov/olse-pplo-calculator.

b. Are gratuities or tips, as defined in the California Labor Code, part of an employee’s normal weekly wages, for purposes of calculating the Supplemental Compensation owed under the SF PPLO?

Answer: No.

c. Is a “restaurant service charge” considered a tip and must it be included in normal weekly wage and supplemental compensation calculations?

Answer: A mandatory service charge is not considered a gratuity but may be considered wages if the funds are distributed by the employer to employees. Please see [California Division of Labor Standards FAQ 6](#).

d. Can an employer withhold funds for retirement plans and health insurance premiums from the supplemental compensation payment?

Answer: Yes; however, OLSE is unable to provide tax advice about withholdings.

5) Use of Vacation, Sick Time, and PTO

a. Can an employer apply an employee’s accrued, unused vacation leave toward the cost of Supplemental Compensation under the SF PPLO?

Answer: An employer must get the employee’s agreement to apply up to two weeks of accrued, unused vacation leave value towards covering the amount of Supplemental Compensation owed. However, *if the employee does not agree, the employer is not required to pay Supplemental*

Compensation. Please see Rule 4 about notifying employees.

- b. **The SF PPLO states that, to be eligible to receive Supplemental Compensation, a Covered Employee must agree to allow a Covered Employer to apply up to “two weeks” of unused vacation leave. What constitutes a “week” for part-time employees or employees whose hours fluctuate?**

Answer: For part-time employees, a “week” is a regularly scheduled week of work. For example, for an employee who works 32 hours per week, a “week” is 32 hours. For employees whose hours fluctuate, a “week” is the average number of hours worked per week during the Lookback Period, which is defined on page 2 of the Rules.

- c. **Can an employer apply an employee’s sick time toward covering the cost of Supplemental Compensation?**

Answer: No. An employer may not use an employee’s sick time to cover the cost of the Supplemental Compensation.

- d. **Can an employer apply an employee’s accrued, unused Paid Time Off (PTO) toward covering the cost of Supplemental Compensation?**

Answer: It depends. If the PTO plan differentiates between vacation time and sick time, the employer may, with the agreement of the employee, apply the value of up to two weeks of accrued, unused PTO time that is designated as vacation time. (However, as noted in response to the previous question, if the employee refuses to agree, then the employer need not pay Supplemental Compensation.) The employer cannot use any PTO time that is designated as sick time to meet its supplemental compensation obligation.

For PTO plans that do not distinguish between or track vacation or sick time, when requested by the employer, the employee must allow the employer to apply the value of up to two weeks of accrued, unused PTO in excess of 72 hours. (72 hours of PTO cannot be used to satisfy the employer’s Supplemental Compensation obligation due to the intersection of provisions of the SF PPLO and the San Francisco Paid Sick Leave Ordinance (PSLO)).

If the employee does not allow the employer to use accrued PTO over the 72 hours, the employer is not required to pay the Supplemental Compensation.

Examples:

Example 1. An employer with 20 employees has a PTO policy that complies with Article 11.3(e) of the PSLO. An employee has accrued 72 hours of PTO at the start of their CA PFL. The employee need not agree to allow the employer to apply any PTO to satisfy the employer’s Supplemental Compensation obligation.

Example 2. Same facts as in Example #1, except that the employee has accrued 82 hours of PTO at the start of their CA PFL. When the employer asks to use the PTO accrual, the employee must agree to allow the employer to apply the value of up to 10 hours of PTO to satisfy the employer’s Supplemental Compensation obligation.

Example 3. Same facts as in Example #1, except that the employee has accrued 160 hours of PTO at the start of their CA PFL. When the employer asks to use the PTO accrual, the employee must agree to allow the employer to apply up to two weeks of PTO (80 hours for a full-time employee) to satisfy the

employer's Supplemental Compensation obligation.

e. If an employee does not have any accrued, unused vacation at the start of their leave, is the employer still required to provide Supplemental Compensation?

Answer: Yes. In these circumstances, the employer is required to pay the total Supplemental Compensation and may not offset its obligation with the employee's vacation time (including vacation time that the employee accrues after returning from parental leave).

f. To be a Covered Employee under the SF PPLO, one of the requirements is that an employee must have started working for the Covered Employer "at least 180 days prior to the start of the leave period." When does the leave period start?

Answer: The leave period starts on the first day for which the employee is paid CA PFL benefits. However, even if the child is born prior to the 180-day period, the parent may be eligible to get PFL and therefore PPLO Supplemental Compensation later on in the year, so employers may have an obligation for newer employees.

6) Interaction of PPLO with San Francisco Health Care Security Ordinance

a. Are employers required to make Health Care Expenditures pursuant to the HCSO when an employee is on leave to bond with a new child and receiving Supplemental Compensation under the PPLO?

Answer: So long as the employee continues to satisfy the definition of a "Covered Employee" under the HCSO, the employer is required to make Health Care Expenditures for all Hours Payable. Because the employer pays a portion of the employee's normal weekly wages as Supplemental Compensation, the employer is required to make Health Care Expenditures for a corresponding portion of the average weekly hours. If the number of hours is a fraction of an hour, the employer should round to the nearest full-hour increment.

Example. An employer is paying an employee Supplemental Compensation equal to 45% of the employee's Normal Gross Weekly Wages to comply with the PPLO. The employee normally works 40 hours per week. The employer must make Health Care Expenditures for 45% of the employee's weekly hours, or 18 hours.

b. If an employee is on leave to bond with a new child and receiving Supplemental Compensation under the PPLO, and the employee ceases to be a "Covered Employee" under the HCSO (for example because the employee did not regularly perform eight hours of work during a quarter), must the employer continue to make Health Care Expenditures for that employee?

Answer: No.