San Francisco Requires Employers to Provide Paid Military Leave

Related Attorneys

Jocelyn M. Hoffman

Related Services

Employment Counseling

Labor and Employment

CLIENT ALERT | 2.2.2023

The City of San Francisco recently enacted a first-of-its-kind municipal ordinance, the Military Leave Pay Protection Act, mandating that private employers provide paid military leave to their employees. As explained below, the ordinance requires that employers pay the differential between an employee's military pay and their regular pay. It takes effect on February 19, 2023.

Coverage

The ordinance applies to private employers of 100 of more employees "regardless of location." An "employee" includes any employee who works within the geographic boundaries of San Francisco (including part-time and temporary employees) and who is a member of the reserve corps of the United States Armed Forces, National Guard, or other uniformed service organization of the United States. Employees covered by a collective bargaining agreement that expressly waives the ordinance's requirements "in clear and unambiguous terms" are not covered by the ordinance.

Supplemental Compensation

A covered employee qualifies for supplemental compensation while on "military duty" leave. Military duty leave is broadly defined as: "[A]ctive military service in response to the September 11, 2001 terrorist attacks, international terrorism, the conflict in Iraq, or related extraordinary circumstances, or military service to provide medical or logistical support to federal, state, or local government responses to the COVID-19 pandemic, natural disasters, or engagement in military duty ordered for the purposes of military training, drills, encampment, naval cruises, special exercises, Emergency State Active Duty, or like activity."

The employee receives the difference between their gross military pay and the regular gross pay they would have received (excluding overtime unless overtime is part of their regular schedule). This supplemental compensation may be offset by any other amount paid pursuant to law or the employer's policy.

An employee may take this military duty leave in daily increments for one or more days at a time, for up to 30 days in any calendar year.

Failure to Return from Military Duty Leave

If an employee does not return to their position within 60 days of being released from military duty, the employer may treat the supplemental compensation as a loan "with interest at a rate equal to the minimum amount necessary to avoid imputed income under the Internal Revenue Service Code." The interest would begin to accrue 90 days after the employee's release from military duty or return to fitness for employment, whichever is later, and the loan would be payable in equal monthly installments over a period not to exceed five years.

Administrative Enforcement

Employees may file administrative complaints with the San Francisco Office of Labor Standards Enforcement (OLSE). OSLE may order the payment of any supplemental compensation unlawfully withheld, plus an additional sum as an administrative penalty equal to triple the amount of the withheld supplemental compensation or $250, whichever amount is greater. If a violation resulted in "other harm" to the employee, the penalty will also include $50 for each day that the violation occurred or continued.

Additionally, OSLE can request that city agencies or departments revoke or suspend any registration certificates, permits, or licenses held by the employer until the violation is remedied if "prompt compliance" is not otherwise forthcoming. To offset its costs, OSLE may order the employer to the $50 for each day of the violation per employee.

Civil Enforcement

"The city, or any person or entity acting on behalf of the public as provided for under applicable state law" may bring a civil action against an employer. Before doing so, the person must serve a written notice to OSLE and the city attorney of an intent to bring an action. The person then may not bring the action if the city does so, the OSLE informs the person it intends to initiate administrative enforcement, or the OSLE informs the person it found that no violation occurred.

A prevailing party may recover "such legal or equitable relief as may be appropriate to remedy the violation," including the payment of the supplemental compensation. Additionally, the party may recover liquidated damages of $50 for each employee for each day of violation. The employer may be ordered to pay triple the amount of the withheld supplemental compensation or $250, whichever amount is greater.

Conclusion

Employers should review their personnel policies to account for this new paid military leave mandate. Contact your Vorys lawyer if you have questions about the ordinance or the myriad other San Francisco workplace ordinances.