



FAMILY FRIENDLY WORKPLACE ORDINANCE (FFWO)

Companion Slides to the FFWO Presentation

**City and County of San Francisco
Office of Labor Standards Enforcement (OLSE)**

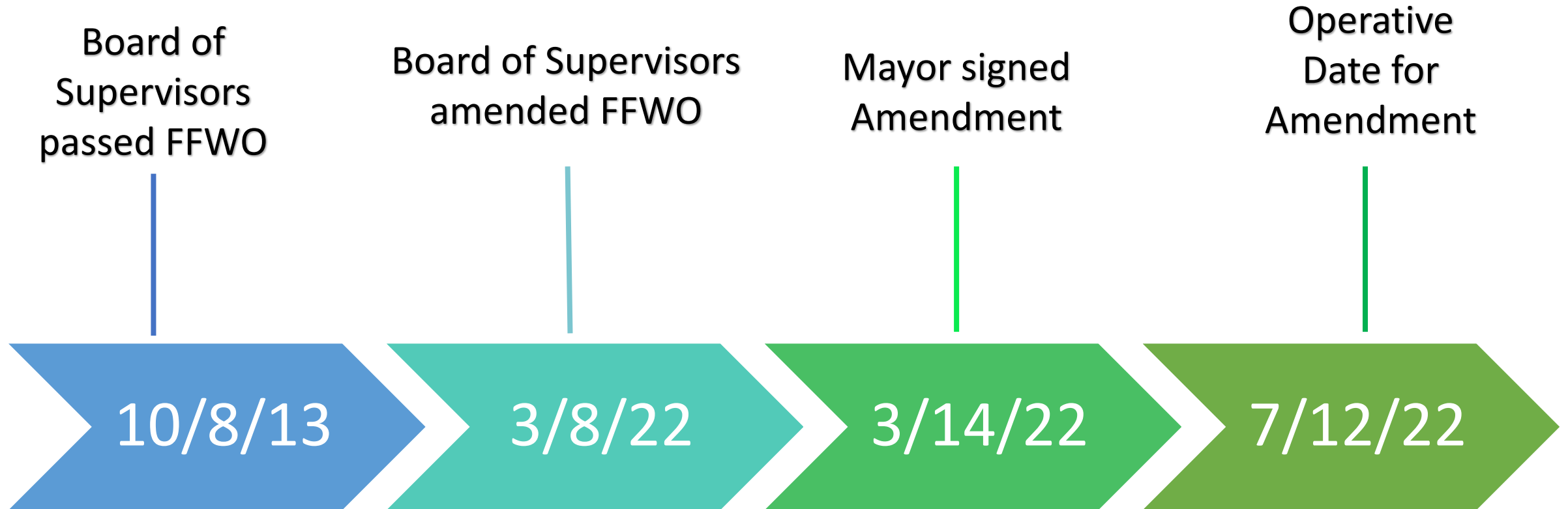


OLSE Staff

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Legislative History



Employee Rights

The FFWO gives Covered Employees the right to a flexible or predictable working arrangement to assist with caregiving responsibilities for:

1. A child or children for whom the Employee has assumed parental responsibility.
2. A person(s) with a serious health condition in a family relationship* with the caregiver.
3. *A person who* is age 65 or older and in a family relationship* with a caregiver.

*“Family Relationship” means a relationship in which a Caregiver is related by blood, legal custody, marriage, or domestic partnerships, as defined in San Francisco Administrative Code Chapter 62 or California Family Code Section 297, as either may be amended from time to time, to another person as a spouse, domestic partner, child parent, sibling, grandchild, or grandparent.



Covered Employer

- 20 or more Employees (anywhere in the world).
- Must have a business location within the geographic boundaries of the City and County of San Francisco. A business location is any physical space used for the business to run its operations.



Covered Employee

- Works at least 8 hours per week within the geographic boundaries of San Francisco, with those boundaries extending to telework if Employee is assigned to the San Francisco business location.
- Has been employed by Covered Employer for 6 months or more.



What about Employees who telework?

An Employee is covered by the FFWO if they are assigned to a San Francisco Business location at the time the request is made regardless of where they are physically working. An Employee is NOT covered by FFWO if they were never assigned to the San Francisco office.



See Rule 2.3: When determining where a remote Employee is assigned for purposes of the FFWO, an Employer should consider factors including, but not limited to, the location of the Employee's computer, manager, teammates or co-workers, personnel file, where the Employee worked prior to beginning Telework, and/or Employee's proximity to the business location.



Example 1: Is this a Covered Employee?

Rule 2.3 – Example 1

Employer has offices in San Francisco, Burlingame, and Hayward. Employee works from their home in San Mateo and if they were to work “onsite” they would be assigned to work in the Burlingame office. Employee is not covered by the FFWO even though they work for an Employer who has an office in San Francisco.

San Francisco Bay Area Business Locations for “ABC” Company



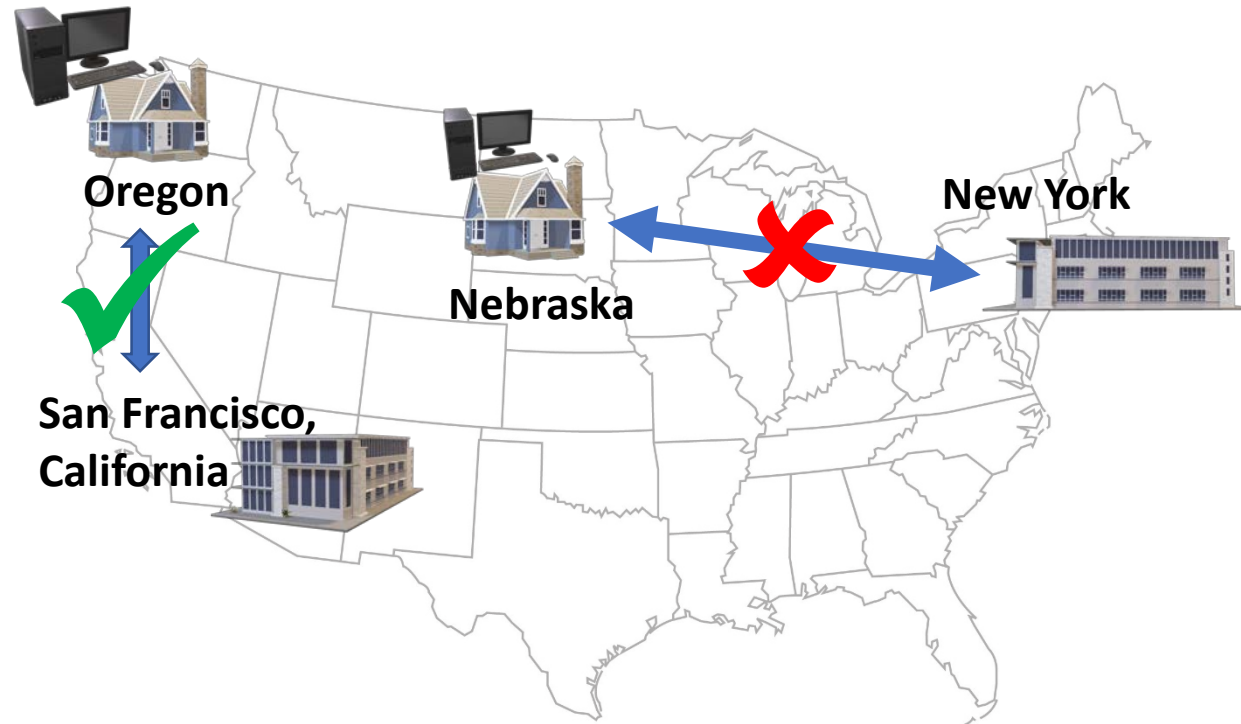
Example 2: Are these Employees Covered Employees?

Employee 1

2019- Works at San Francisco Office

2020- Begins to telework from Oregon AND is assigned to the San Francisco office

Employee 1 is covered under FFWO



Employee 2

2021- Lives in Nebraska and hired into a telework position assigned to the New York Office

Employer has a business location in San Francisco.

Employee 2 is NOT covered under FFWO

Rule 2.3 – Example 2

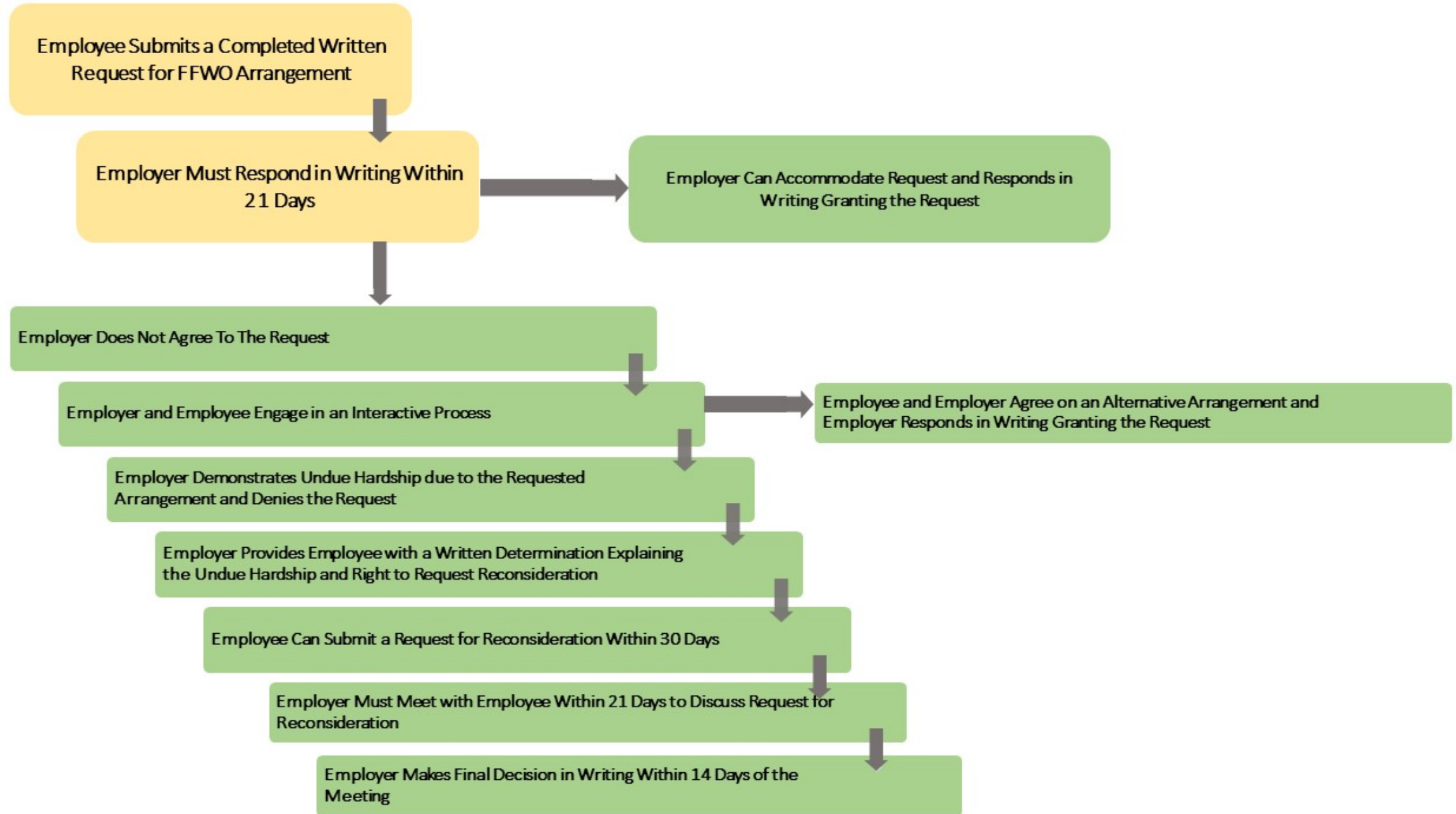


What does the FFWO Require the Employer to do?

1. Upon receiving a completed written request, review to determine if you can provide the Employee with the flexible or predictable work arrangement to assist in caring for their children, family members with serious health conditions, or family member 65 or older as requested.
2. If you do not agree to the request, engage in a good faith interactive process to determine a mutually-agreeable arrangement.
3. If unable to accommodate the request, notify the Employee in writing, explaining the undue hardship determination and the Employee's right to request reconsideration and file a complaint with OLSE.



FFWO Process



Employee Submits a Request

- Request must be in writing. If Employee makes a verbal request, Employer must immediately direct the Employee to submit in writing.
- Request must be for caregiving responsibilities as defined under FFWO.
- Request must explain how the request is related to caregiving.
- Request must be specific as to the proposed start and end dates, modified hours, days, work location, predictable hours, etc.
- Request date should be at least 21 calendar days* prior to the requested start date for the Flexible or Predictable Working Arrangement as Employers have 21 calendar days to issue a determination.

* If requested start date of the arrangement is less than 21 days from the time of the request, Employer should make best efforts to make a timely decision, but the law affords the Employer 21 days to issue a determination.



Employer Receives a Request

- Once a completed written request is received, Employer has **21 days to respond to the Employee's request.**
- Employer has the right to request verification.*
- The 21-day deadline may be extended if there is an agreement with the Employee confirmed in writing.

*More information discussed on next slide



Verification

Employee's attestation of caregiving duties may suffice but Employer can request verification within limits.

The Employer **may ask** the Employee to provide a note confirming the obligation (e.g. medical appointment is on Tuesdays at 3pm).

The Employer **may not ask** for confirmation about the reason for the appointment or extraneous verification, such as from Employee's family members that they are unavailable to assist, when there is no basis to believe that Employee's attestation is invalid.



Example: Regular Scheduling Request or FFWO Request? (1/2)

Rule 3.3 Example

- An Employee receives their schedule every two weeks and is required to make a scheduling request on the Friday before the schedule is posted. On the first of the month, the Employee requests **not to be scheduled for the night shift on the twelfth of the month.**
- The manager hears from a co-worker that Employee's request is to attend his son's dance recital. Is this a valid FFWO request? Or is this a regular scheduling request?



Example: Regular Scheduling Request or FFWO Request? (2/2)

The Employee's request is not considered a notice of the Employee's need for a Flexible or Predictable Working Arrangement since he did not expressly disclose that his need is due to his ongoing caregiving responsibilities and rather it relates to a singular occasion. Also, his request was not made in a timely manner (i.e. affording the Employer 21 calendar days to respond). This request should be regarded and addressed as a regular scheduling request.



Granting the Request

- Confirm the agreement in writing to the Employee.
- This must be completed within **21 days of receiving the Employee's request.**



If Employer does not agree to the request...

Engage in an interactive process

1. Both Employer and Employee must engage in an interactive process where they meet to discuss alternative arrangements.
2. The Employer may approve an alternative arrangement that effectively meets the Employee's caregiving responsibilities.



Interactive Process (1/2)

Must engage in an interactive process with the Employee to attempt in good faith to determine a Flexible or Predictable Working Arrangement that is acceptable to both the Employee and Employer.

- Interactive process - timely, good faith, discussion, either orally or in writing, between the Employer and Employee
- Exchange essential information without delay or obstruction of the process



Interactive Process (2/2)

- Employer should analyze the functions and purpose of the Employee's position in relation to the operations of the Employer.
- The Employer should consider the requested arrangement, but may approve an alternative arrangement that is effective in meeting the Employee's caregiving responsibilities if that arrangement better suits the operations of the business.



Example: The Interactive Process (1/2)

Rule 5.2 Example

Employee requests to telework on Wednesdays due to caregiving responsibilities, but their team has a mandatory in-person team meeting on Wednesdays.



Example: The Interactive Process (2/2)

- For this example, the Employer does not agree to allow the Employee to miss these mandatory meetings. What should the Employer do next? The Employer must contact the Employee in a timely manner, without unreasonable delay, to begin the interactive process. Examples of reasonable delay would be the Employee being on vacation or the Employer being at a work conference.
- Employer must have a conversation with Employee about alternative accommodations that would support the Employee's need to meet their caregiving responsibilities. During their discussion, Employee explains they need to be home by 3:00pm. Employer could propose that Employee work on site until 12:00pm, thereby attending the team meeting, and then Telework the remainder of the workday.
- As a best practice, Employer should document their conversations with the Employee.



If no agreement is met...

1. If Employer seeks to deny the request, they must prove **undue hardship**, demonstrating the request would cause significant expense or operational difficulty.
2. An Employer is not required to alter or impede their business operations in a manner that would cause significant expense or operational difficulty.



Undue Hardship Reason for Denial (1/3)

- Undue Hardship - causing the Employer significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the Employer's business.
- The denial must be in consideration of the most current arrangement the Employee has requested, whether it be the original request made or the altered request that resulted from the interactive process.



Undue Hardship Reason for Denial (2/3)

- If an Employer asserts that it can only comply with some of the requested arrangement (e.g., The Employer can reduce hours but not allow the Employee to begin work earlier in the day) without undue hardship, it should comply with those provisions of the request and demonstrate undue hardship for the part of the request it cannot accommodate.



Undue Hardship Reason for Denial (3/3)

- Each situation is unique and subject to an individualized analysis, and Employers should consider their circumstances in determining whether they can assert an undue hardship.
- The burden of proof is on the Employer.



Example 1: Can the Employer deny this request?

Store Clerk & Caretaker Responsibilities (1/2)

Rule 6.4 – Example 1

Employee works an eight-hour shift from 9:30 am to 6:00 pm as a store clerk. Employee requests a predictable schedule to begin work at 7:00 am so they can return home in time to administer medication to their 76 years old grandmother. The Employer's store is open from 10:00 am until 6:00 pm. Apart from preparing for opening, as a store clerk, the Employee does not perform any duties that can be accomplished when the store is closed and the requested schedule or reducing the Employee's hours will lead to insufficient coverage during store hours.



Example 1: Can the Employer deny this request?

Store Clerk & Caretaker Responsibilities (2/2)

- After receiving the request from the Employee, the Employer must follow the FFWO process which includes engaging in an interactive process where they timely meet to discuss alternative arrangements.
- The Employer should consider the requested arrangement but may approve an alternative arrangement that effectively meets the Employee's caregiving responsibilities. Employer should analyze the functions and purpose of the Employee's position in relation to the operations of the Employer.
- With the information provided in the example, The Employer can likely demonstrate an undue hardship and deny the requested arrangement because of a detrimental effect on the Employer's ability to meet customer or client demands and insufficiency of work to be performed during the time or at the location the Employee proposes to work.



Example 2: Can the Employer deny this request?

Office Worker & Childcare Responsibilities

Rule 6.4 – Example 2

In November, an Employee requests to work a four day-a-week, 10 hour-a-day schedule until the following August to provide care on Fridays because their child's preschool reduced operations to Monday through Thursday only. The Employer does not hold any mandatory meetings on Fridays. The Employee holds a position that is not public-facing and all essential duties can all be performed Monday through Thursday.



Example 2: Can the Employer deny this request?

Office Worker & Childcare Responsibilities (1/2)

- After receiving the request from the Employee, the Employer must follow the FFWO process, including engaging in the interactive process if they do not agree to accommodate the request as stated.
- Even though the Employer prefers everyone to work a Monday through Friday, 8 hours per day schedule, and is concerned others will also want to work this schedule, they would not likely be able to demonstrate undue hardship based on their preference and concern. However, if an Employee's requested schedule would require the Employer to pay the Employee overtime wages pursuant to the Cal. Labor Code, the request could be denied due to significant identifiable costs directly caused by the requested arrangement.
- In this scenario, Employee's duties can be completed on a Monday to Thursday (4/10s) schedule and Employee is exempt from overtime wages, so the Employer cannot demonstrate a significant financial or operational impact from allowing the Employee to work this schedule. If after approving the schedule, Employer notices a decline in productivity that is demonstrable, they can revisit the approval of the schedule per the ordinance.



Example 3: Can the Employer deny this request?

Relocation Request (1/2)

Rule 6.4 – Example 4

Employee requests to work at the North Beach location instead of the Outer Sunset location of the Employer's business due to caregiving responsibilities. There is a need for staffing at the North Beach location, but the Employer is concerned that other Employees will also want to request a change to the North Beach location.



Example 3: Can the Employer deny this request?

Relocation Request (2/2)

- After receiving the request from the Employee, the Employer must follow the FFWO process which includes the interactive process where both Employer and Employee must meet to discuss alternative arrangements.
- The Employer may approve an alternative arrangement that effectively meets the Employee's caregiving responsibilities, such as the Employee working part time at the Outer Sunset location and part time at the North Beach location if such an arrangement would allow the Employee to meet their caregiving responsibilities. For this specific example, the Employer would not likely be able to demonstrate undue hardship based on their concern.
- Concern about managing multiple requests would not support undue hardship. An Employer can use objective criteria to address multiple FFWO requests, such as seniority. Remember, if the Employer cannot demonstrate undue hardship, they cannot deny the request.



Send the Denial in a Written Response

An Employer must explain the denial in a written response containing the following:

1. Explanation of the basis for the denial and undue hardship.
2. Notification to the Employee of their rights to:
 - a) Request reconsideration by the Employer under Section 12Z.6; and
 - b) File a complaint under Section 12Z.10, including a copy of the notice under Section 12Z.8.



Request for Reconsideration After Denial

- Worker has right to request reconsideration within 30 days after the denial.
- Employer must meet with the Employee within 21 days to discuss and reconsider FFWO request.
- Employer must issue a final decision in writing within 14 days of the meeting.



Employee May File a Complaint with OLSE

An Employee can file a complaint if:

1. They received a response from the Employer;

OR

2. The time frame elapsed without receiving a response from the Employer.



Noticing Requirements (1/2)

Rule 11

- Post the Official FFWO Notice/Poster
 - OLSE mailed all registered businesses a copy of the poster.
 - Printable version on FFWO Webpage (English, Spanish, Chinese, & Filipino/Tagalog)

<https://sfgov.org/olse/family-friendly-workplace-ordinance-ffwo>

- If the language spoken by 5% or more of the workforce is a language other than those listed, the Employer shall be responsible for translating the form and providing it to the workforce.



Noticing Requirements (2/2)

- Employer must provide Employees with the FFWO request form or comparable form within a reasonable time after the Employee inquired about the FFWO accommodation.
 - FFWO Form on FFWO Webpage
<https://sfgov.org/olse/family-friendly-workplace-ordinance-ffwo>
 - Give copy of the FFWO Form to current and new Employees.
 - Must add policy to your Employee handbook when your handbook is updated.



Enforcement, Penalties, & Appeal Procedures

Review information in 12Z and Rules & Regulations

- Enforcement Procedures

Section 12 Z.10 (a)(5)

Rule 8

- Administrative Penalties

Section 12 Z.10 (a)(2) and (5)

Rule 10

- Appeals Procedures

Section 12 Z.10(a) (5)

Rule 10



Best Practices (1/2)

- Must engage in an interactive process with the Employee to attempt in good faith to determine a Flexible or Predictable Working Arrangement that is acceptable to both the Employee and Employer.
- Interactive process - timely, good faith, discussion, either orally or in writing, between the Employer and Employee.
- Feel free to meet and discuss the request with Employee but everything should be memorialized in writing.



Best Practices (2/2)

- Keep good notes, emails, analysis, calculations, etc.
- Must save all documents involved in the FFWO process for at least three (3) years.
- Remember that each situation is unique and subject to individualized analysis.



Resources

- FFWO Webpage

<https://sfgov.org/olse/family-friendly-workplace-ordinance-ffwo>

- Rules and Regulations
- Amended Ordinance
- Poster/Notice
- FFWO Request Form



Contact Us

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