FILE NO. 221124  
ORDINANCE NO. 008-23

[Police Code - Private Sector Military Leave Pay]

Ordinance amending the Police Code to require private employers to pay employees who are military reservists and are called for military duty the difference between their military salary and their salary as employees, for up to 30 days in a calendar year, and to create procedures for implementation and enforcement of this requirement.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Police Code is hereby amended by adding Article 33Q, consisting of Sections 3300Q.1-3300Q.8, to read as follows:

ARTICLE 33Q: PRIVATE SECTOR MILITARY LEAVE PAY

SEC. 3300Q.1. TITLE.

This Article 33Q shall be known as the Military Leave Pay Protection Act.

SEC. 3300Q.2. BACKGROUND AND FINDINGS.

(a) As of 2022, there were over 600,000 United States military reserve and National Guard personnel serving. This military reserve and National Guard population has been a cornerstone of the City for decades. Military reserve and National Guard members have helped build the City and can be found among the ranks of private sector healthcare, professional, and blue-collar workers. Military
reserve and National Guard personnel have made significant professional and personal sacrifices to serve our community, the City, the State of California, and the United States, and such sacrifices make them specially deserving of recognition and respect.

(b) Military reserve and National Guard personnel face many challenges when they serve dually as civilian workers and in the uniformed services, including employment discrimination, income insecurity, financial stress, service-related injuries, mental stress, and suicide.

(c) According to a September 9, 2019 Congressional Research Service report authored by Kristy Kamarck and Bryce Mendez, military reservists in the National Guard had a suicide rate of 21.8 per 100,000 persons, compared to 17.4 per 100,000 in the U.S. adult population. While all military personnel and veterans have common suicide risk factors such as exposure to combat trauma or stress, combat-related illness or injury, increased access to firearms, and reintegration issues, there are additional suicide risk factors unique to military reservists, due to the dual nature of their employment.

Due to the part-time nature of their military service, most military reservists are employed in the civilian sector.

(d) Military reserve and National Guard personnel are often required to take military leave from work in order to fulfill their obligations, including attending annual training, weekend training, and emergency activations. Military reserve and National Guard personnel have also been deployed to respond to the COVID-19 pandemic, natural disasters such as wildfires and floods, the need to protect the California and United States Capitols, and overseas missions. Private sector military reserve and National Guard personnel taking military leave often take a loss in compensation because their civilian jobs pay more.

(e) Due to the many challenges facing military reserve and National Guard personnel, the United States has made efforts to protect the income and employment security of such personnel. Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Ch. 43, military
reserve and National Guard personnel are protected from employment discrimination on the basis of their service and are guaranteed civilian reemployment rights following military service.

(f) State and local laws also protect the income and employment security of military reserve and National Guard personnel. Under California Government Code Sections 19775 and 19775.1, state employees granted military leave are eligible for paid leave for the first 30 calendar days of active duty served during the absence. California Military and Veterans Code Sections 395.01, 395.02, and 395.03 grant other public employees up to 30 calendar days of pay while on military leave.

(g) Administrative Code Section 16.1 states that City employees granted military leave are eligible for up to 30 days of pay while on military leave in a given fiscal year.

(h) Most employment protections for military reserve and National Guard personnel apply to public sector employees. Salesforce, the largest employer in San Francisco as of 2022, provides military leave pay for military reservists and National Guard for up to 12 months. While some private employers such as Salesforce have stepped up in this manner, military reserve and National Guard personnel in the private sector have far fewer protections.

SEC. 3300Q.3. DEFINITIONS.

For purposes of this Article 33Q, the following definitions apply:

“Agency” means the Office of Labor Standards and Enforcement or any successor department or office.

“Employee” means any employee of any Employer who works within the geographic boundaries of San Francisco, including but not limited to 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.

“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 100 or more employees, regardless of location. “Employer” shall not include the City or any other governmental entity.

“Military Duty” means active 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.

“Supplemental Compensation” means an Employer’s obligation to pay an Employee’s partial salary in accordance with Section 33000.4.

SEC. 33000.4. SUPPLEMENTAL PAY REQUIRED.

(a) Supplemental Compensation. Subject to subsection (b), an Employee shall receive from their Employer, while on leave for Military Duty, the difference between the amount of the Employee’s gross military pay and the amount of gross pay the Employee would have received from the Employer, had the Employee worked the Employee’s regular work schedule (excluding overtime unless regularly scheduled as part of the Employee’s regular work schedule). This leave for Military Duty with Supplemental Compensation can be taken in daily increments for one or more days at a time, for up to 30 days in any calendar year.

(b) Limitations and conditions.

(1) The amounts of pay required by this Section 33000.4 shall be offset by amounts required to be paid pursuant to any other law or to any policy of the Employer for military leave, such that the Employee does not receive excessive payments for the leave time taken, resulting in the
Employee receiving more compensation cumulatively because of this Section 33000.4 than the Employee would have received had the Employee worked the Employee’s regular work schedule (excluding overtime unless regularly scheduled as part of the Employee’s regular work schedule).

(2) If the Employee, having received Supplemental Compensation under subsection (a) and being fit for employment in their previous position upon release from Military Duty, does not return to their position with the Employer within 60 days of release from Military Duty, the compensation described in subsection (a) may, at the Employer’s option, be treated as a loan payable with interest at a rate equal to the minimum amount necessary to avoid imputed income under the Internal Revenue Service Code of 1986, as amended from time to time, and any successor statute. In that case, interest shall begin to accrue 90 days after the Employee’s release from Military Duty or return to fitness for employment, whichever is later. Such loan will be payable in equal monthly installments over a period not to exceed five years, commencing 90 days after the Employee’s release from Military Duty or return to fitness for employment, whichever is later.

SECTION 33000.5. IMPLEMENTATION AND ENFORCEMENT.

(a) Implementation. The Agency shall coordinate implementation and enforcement of this Article 33Q and may promulgate appropriate guidelines and/or rules for such purposes. Any guidelines or rules promulgated by the Agency 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 Article. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Article, including supplementary procedures for helping to inform Employees of their rights under this Article, for monitoring employer compliance with this Article, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Article.
(b) **Administrative Enforcement.**

(1) The Agency is authorized to take appropriate steps to enforce this Article 330. The Agency may investigate any possible violations of this Article. 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, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, the payment of any Supplemental Compensation unlawfully withheld, and the payment of an additional sum as an administrative penalty to each Employee or other person whose rights under this Article 330 were violated. If any Supplemental Compensation was unlawfully withheld, the dollar amount of Supplemental Compensation withheld from the Employee multiplied by three, or $250, whichever amount is greater, shall be included in the administrative penalty paid to the Employee. In addition, if a violation of this Article resulted in other harm to the Employee or any other person, or otherwise violated the rights of Employees or other persons, this administrative penalty shall also include $50 to each Employee or person whose rights under this Article were violated for each day or portion thereof that the violation occurred or continued.

(3) Where prompt compliance with an order of the Agency pursuant to subsection (b) is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action, 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 for each day or portion thereof of a violation, as to each employee or person for 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 Article

(4) An Employee or other person may report to the Agency any suspected violation of this Article 33Q. The Agency shall encourage reporting 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 their name and identifying information as necessary to enforce this Article 33Q0 or for other appropriate purposes.

(5) The Agency shall not proceed with administrative enforcement under this subsection (b) during the pendency of a civil action brought under subsection 33Q.5(c).

(c) Civil Enforcement.

(1) 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 in a court of competent jurisdiction against the Employer or other person violating this Article 33Q subject to subsection (2) below.

(2) No person aggrieved by a violation of this Article 33Q, or any entity a member of which is aggrieved by a violation of this Article, may bring a civil action in a court of competent jurisdiction against an Employer or other person violating this Article without first serving a written notice to the Agency and the City Attorney of an intent to bring an action, including a statement of the grounds for believing one or more violations have occurred. No aggrieved person or entity may bring a civil action under this subsection (c)(2) if, within 90 days after service of the notice, the City brings a civil action alleging a violation or the Agency informs the person or entity in writing that (A) it has found probable cause to believe a violation has occurred and it intends to initiate administrative enforcement under subsection (b), or (B) it has determined that no violation occurred. If the City fails to file suit and the Agency fails to provide written notice within the aforementioned 90-day period, the person or entity may bring a civil action for violation of this Article 33Q. The statute of limitations for...
filing a civil action under this subsection (c)(2) shall be tolled during the aforementioned 90-day period.

(3) Upon prevailing, any party that has brought a civil action under this subsection 3300Q.5(c) shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to the payment of any Supplemental Compensation 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 Article 3300Q were violated for each day or portion thereof that the violation occurred or continued, plus, where the Employer has unlawfully withheld Supplemental Compensation to a Employee, the dollar amount of Supplemental Compensation withheld from the Employee multiplied by three; or $250.00, whichever amount is greater; and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Article 3300Q on behalf of the public as provided for under applicable State law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

(d) Interest. In any administrative or civil action brought under this Article 330, 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, as amended from time to time.

(e) Remedies Cumulative. The remedies, penalties, and procedures provided under this Article 330 are cumulative.

SECTION 3300Q.6. WAIVER THROUGH COLLECTIVE BARGAINING.

The requirements of this Article 330 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.
SECTION 3300Q.7. OTHER LEGAL REQUIREMENTS.

(a) Nothing in this Article 33Q shall be interpreted or applied so as to create any requirement, power, or duty in conflict with State or Federal law. The term "conflict" as used in this Section 3300Q.7 means a conflict that is preemptive under State or Federal law.

(b) Nothing in this Article 33Q shall be interpreted or applied to prevent an Employer from adopting or retaining paid military leave policies that are more generous than policies that comply with this Article.

SECTION 3300Q.8. UNDERTAKING FOR THE GENERAL WELFARE.

In undertaking the adoption and enforcement of this Article 33Q, the City is 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 Article does not create a legally enforceable right by any member of the public against the City.

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By:  /s/ Victoria Wong
      VICTORIA WONG
      Deputy City Attorney
File Number: 221124  
Date Passed: January 10, 2023

Ordinance amending the Police Code to require private employers to pay employees who are military reservists and are called for military duty the difference between their military salary and their salary as employees, for up to 30 days in a calendar year, and to create procedures for implementation and enforcement of this requirement.

December 08, 2022 Public Safety and Neighborhood Services Committee - RECOMMENDED AS COMMITTEE REPORT

December 13, 2022 Board of Supervisors - PASSED ON FIRST READING
  Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

January 10, 2023 Board of Supervisors - FINALLY PASSED
  Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 221124  

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/10/2023 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

1/20/23  
Date Approved