

California: Labor & Employment Alert

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CALIFORNIA CITIES ENHANCE PAID SICK LEAVE UNDER COVID-19

Even before the current COVID-19 pandemic, several California cities had already enacted ordinances providing for paid sick leave more generous than that provided by state law. In response to COVID-19, some of those same cities have implemented emergency measures to increase the paid sick leave benefits to certain workers. For employers with employees working in those cities, it is important to know whether the new laws apply to your business and, if so, what is required. Below is a summary of those new laws.

LOS ANGELES

Los Angeles passed new law to provide supplemental paid sick leave during the current pandemic. The law is effective from April 7, 2020, until 2 calendar weeks after the COVID-19 local emergency ends.

Which Employers Are Covered?

The emergency order covers any employer that has either: (i) 500 or more employees within the City of Los Angeles, or 2000 or more employees within the United States. Exempted are emergency and health services employers, global parcel delivery services employers, government agencies, employers that already provide 160 or more hours of paid leave annually, new businesses that started in or relocated to the City between September 4, 2019, and March 4, 2020, and employers that already closed or provided leave for 14 days due to the pandemic.

Which Employees Are Eligible?

Any individual who performs work within the geographic boundaries of the City of Los Angeles may request supplemental paid sick leave for the following reasons:

- 1) To isolate or self-quarantine as required or recommended by health official or healthcare provider due to COVID-19 infection or possible exposure;
- 2) Employee is at least 65 years old or has certain health conditions such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
- 3) Employee needs to care for family member who is required to isolate or self-quarantine; or
- 4) Employee needs to care for family member whose senior or child care provider, or school, has temporarily closed due to the pandemic.

What Is Provided?

An employee who works at least 40 hours/week is entitled to 80 hours of supplemental paid sick leave, calculated based on an average two week pay over the period of February 3, 2020 through March 4, 2020. An employee who works less than 40 hours/week is entitled to supplemental paid sick leave in an amount no greater than the employee's average two week pay over the period of February 3, 2020 through March 4, 2020. The paid sick leave amount shall not exceed \$511/day and \$5,110 in the aggregate.

No doctor's note or other documentation may be required.

SAN FRANCISCO

San Francisco passed an emergency sick leave ordinance that became effective April 17, 2020, and is set to expire on June 17, 2020, or upon the termination of the Public Health Emergency, whichever occurs first.

Which Employers Are Covered?

The emergency law fills the gap left by the Federal Families First Coronavirus Response Act and covers any employer that has 500 or more employees worldwide.

Which Employees Are Eligible?

Any individual who performs work within the geographic boundaries of the City of San Francisco may request emergency sick leave for the following reasons:

- 1) Employee is subject to quarantine or isolation orders related to COVID-19;
- 2) Employee has been advised by a healthcare provider to self-quarantine;
- 3) Employee is experiencing symptoms associated with COVID-19 and seeking a medical diagnosis;
- 4) Employee is caring for a family member who is subject to an order as described in sections 1 through 3 above;
- 5) Employee is caring for a family member whose school or place of care is unavailable due to the Public Health Emergency; or
- 6) Employee is experiencing any other substantially similar condition.

If elected by their employers, healthcare providers and emergency responders may be limited to paid sick leave only for reasons #1-3 above.

What Is Provided?

An employee who was full-time as of February 25, 2020, is entitled to 80 hours of emergency sick leave. An employee who was part-time as of February 25, 2020, is entitled to the number of hours normally worked in a two-week period, based on the average number of hours worked during the prior six months.

The following are prohibited: (i) requiring a doctor's note or other documentation, (ii) requiring that the emergency sick leave be in increments of more than one hour, (iii) reducing paid time off policies on or after the effective date of the ordinance, and (iv) requiring employees to find replacement workers to cover their leave.

SAN JOSE

The City of San Jose's supplemental paid sick leave ordinance was passed on April 7, 2020, became effective immediately and is set to last through December 31, 2020.

Which Employers Are Covered?

San Jose's ordinance covers only employers that both (i) maintain a facility within the City's boundaries, and (ii) are not required to provide sick leave benefits under the federal Emergency Paid Sick Leave Act. In other words, this ordinance applies not only to employers with 500 or more employees, but also to employers with fewer than 50 employees and employers of healthcare providers or emergency responders who are excluded from the Families First Coronavirus Response Act.

Which Employees Are Eligible?

Only individuals who (i) have worked at least two hours within the geographic boundaries of the City of San Jose and (ii) leave their residence to perform essential work, may request paid sick leave for the following reasons:

- 1) Employee is subject to quarantine or isolation orders due to COVID-19;
- 2) Employee has been advised by a health-care provider to self-quarantine due to COVID-19;
- 3) Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;, or
- 4) Employee is caring for an individual who is subject to a quarantine or isolation order, or who has been advised by a health-care provider to self-quarantine, due to COVID-19.

What Is Provided?

Full-time employees are entitled to 80 hours of emergency paid sick leave. Part-time employees are entitled to paid sick leave equal to the number of hours worked on average over a two-week period, based on the average number of hours worked during the prior six months. The paid sick leave amount shall not exceed \$511/day and \$5,110 in the aggregate. For employees taking paid sick leave to care for another person, they are to be paid at least two-thirds of their regular rate of pay up to \$200/day, not to exceed an aggregate of \$2,000.

Employers cannot require the employee to find replacement as a condition of using sick leave. Unused sick leave will not be available to the employee after this ordinance expires.

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More California cities are considering similar measures to provide supplemental paid sick leave to employees performing work within the cities' boundaries. Because the above summary does not spell out all the details of the new laws, employers are encouraged to consult counsel for further guidance in navigating the new and ever changing legal requirements in responding to the current pandemic.