

REVISED LEGISLATIVE DIGEST
(Amended in Committee – February 4, 2021)

[Emergency Ordinance - Public Health Emergency Leave]

Reenactment of emergency ordinance (Ordinance No. 59-20 as reenacted by Ordinance Nos. 90-20, 136-20, 217-20, and 270-20) to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19, with amendments to prospectively exempt certain non-profit organizations from the emergency ordinance and to strike a provision allowing leave to be taken without regard to employees' work schedules.

Existing Law

An emergency ordinance, the Public Health Emergency Leave Ordinance, Ordinance No. 59-20, reenacted by Ordinance No. 90-20, Ordinance No. 136-20, Ordinance No. 217-20, and Ordinance No. 270-20, temporarily requires private employers with 500 or more employees to provide paid public health emergency leave during the public health emergency related to COVID-19.

The federal Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, temporarily required employers to provide emergency paid sick leave to certain employees who are unable to work or telework due to the COVID-19 public health emergency, but it exempted private employers with 500 or more employees. The emergency ordinance addressed the gap created by FFCRA's exemption of private employers with 500 or more employees. Although FFCRA's emergency paid sick leave requirement lapsed on January 1, 2021, Congress extended employer tax credits for paid sick leave voluntarily provided to employees through March 31, 2021.

The legislative digest for Ordinance No. 59-20 is found in Board File No. 200355. Slightly edited, it summarizes the ordinance as follows:

Under the ordinance, employees may use up to 80 hours of paid public health emergency leave if unable to work (including telework) because:

- (1) The employee is subject to a quarantine or isolation order related to COVID-19, including but not limited to the City or other Bay Area shelter-in-place or "stay-safer-at-home" orders. This includes an employee who is a member of a "vulnerable population" as defined in Order No. C19-05 who is unable to work due to recommendations in any City health order, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or requiring additional restrictions for vulnerable or high-risk populations.
- (2) The employee has been advised by a health care provider to quarantine.
- (3) The employee is experiencing symptoms associated with COVID-19 and seeking a medical diagnosis.

- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described (2), or is experiencing symptoms as described in (3).
- (5) The employee is caring for a family member if the school or place of care of the family member has been closed, or the care provider of such family member is unavailable, due to the public health emergency.
- (6) The employee is experiencing any other substantially similar condition specified by the Local Health Officer, or under Section 5102(a)(6) of the FFCRA, by the United States Secretary of Health and Human Services.

The ordinance allows an employer of an employee who is a health care provider or an emergency responder to limit this leave, but requires such employers to provide such leave when the employee is unable to work: (1) due to a health care provider's advice to self-quarantine; or (2) because the employee is experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and does not meet the Centers for Disease Control and Prevention guidance for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

Public health emergency leave must be provided in addition to paid leave the employer provided before the date of enactment of the ordinance, except employers that voluntarily provided additional paid leave in response to the COVID-19 outbreak may count that leave toward the required public health emergency leave. The ordinance required public health emergency leave to be available for immediate use, and it expires with the expiration of the ordinance, unless reenacted.

The Office of Labor Standards Enforcement ("OLSE") has implemented and is enforcing the ordinance. OLSE published a notice suitable for employers to inform employees of their rights under the ordinance, as well as information about City, state, and federal resources that employees negatively impacted by the public health emergency may qualify to receive. Employers were required to provide the notice to employees, in English, Spanish, Chinese, and any language spoken by at least 5% of the employees who are, or prior to the public health emergency were, at the workplace or job site, within three days after it was published.

The ordinance includes anti-retaliation protections that, among other provisions, prohibit interfering with any right protected under the ordinance and taking any adverse action against an employee for exercising these rights.

The ordinance became effective on April 17, 2020, was reenacted by Ordinance No. 90-20, on June 16, 2020; by Ordinance No. 136-20, on August 24, 2020, retroactive to August 15, 2020, the date that Ordinance 59-20, as reenacted, expired; by Ordinance No. 217-20, retroactive to October 14, 2020, the date that Ordinance 59-20, as reenacted, expired; and by Ordinance No. 270-20, retroactive to December 13, 2020, the date that Ordinance 59-20, as reenacted, expired. The ordinance will terminate automatically on February 11, 2021, unless reenacted.

Amendments to Existing Law

The proposed emergency ordinance reenacts Ordinance No. 59-20, as reenacted, with the result that it does not terminate on February 11, 2021, but rather is extended for an additional 60 days. The proposed emergency ordinance was amended in committee to include two amendments to Ordinance No. 59-20, each of which is prospectively only. These amendments exempt certain non-profit organizations from the ordinance's requirements, and they strike a provision that allows employees to use public health emergency leave regardless of when they are scheduled to work.

If the ordinance is enacted after the expiration of Ordinance No. 59-20, as reenacted, it will have operative effect retroactively to the date that Ordinance No. 59-20, as reenacted, expired, and will expire on the 61st day following that date, unless reenacted.

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