

LEGISLATIVE DIGEST

(Revised 8/17/20)

[Emergency Ordinance - Public Health Emergency Leave]

Reenactment of emergency ordinance (Ordinance No. 59-20) 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.

Existing Law

An emergency ordinance, the Public Health Emergency Leave Ordinance, Ordinance No. 59-20 (“Ordinance”), which was reenacted for an additional 60 days by Ordinance No. 90-20, 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 (“Act”), Public Law No. 116-127, requires 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 exempts private employers with 500 or more employees. The Ordinance addresses the gap created by the Act’s exemption of private employers with 500 or more employees.

The legislative digest for the Ordinance 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 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 self-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 Act, 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 that 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 made available for immediate use, and it expires with the expiration of the Ordinance (unless reenacted).

Under the Ordinance, the Office of Labor Standards Enforcement ("OLSE") has published on its website and through email to employers 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 OLSE has implemented and is enforcing the Ordinance.

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

The Ordinance became effective on April 17, 2020, was reenacted by Ordinance No. 90-20 on June 16, 2020, and will expire August 15, 2020, unless reenacted.

Amendments to Existing Law

The proposed emergency ordinance reenacts Ordinance No. 59-20, with the result that it does not terminate on August 15, 2020, but rather is extended for an additional 60 days. As amended, if the proposed emergency ordinance is enacted after the expiration of Ordinance No. 59-20, as reenacted by Ordinance No. 90-20, it will have operative effect retroactively to the date that Ordinance No. 59-20, as reenacted by Ordinance No. 90-20, expired, and will expire on the 61st day following the date that Ordinance No. 59-20, as reenacted by Ordinance No. 90-20, expired, unless reenacted.

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