

1 [Emergency Ordinance - Public Health Emergency Leave]

2

3 **Emergency ordinance to temporarily require private employers with 500 or more**
4 **employees to provide public health emergency leave during the public health**
5 **emergency related to COVID-19.**

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

10

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

12

13 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

14 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
15 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
16 of any City or County department or office required to comply with time limitations established
17 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
18 that requires the passage of this emergency ordinance.

19 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
20 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of
21 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor
22 to meet the emergency.

23 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer
24 issued Order No. C19-07, replaced by Order No. C19-07b on March 31, 2020, directing San
25 Franciscans to “shelter in place.” This Order generally requires individuals to stay in their

1 homes through May 3, and requires businesses to cease all non-essential operations at
2 physical locations in the City.

3 (d) Due to the public health emergency related to COVID-19 and the actions required
4 to respond to the emergency, a growing number of workers across the City are unable to work
5 (including telework) due to illness, exposure to others with the coronavirus, business closures,
6 and family caregiving obligations related to closures of schools and care facilities and an
7 inability to secure caregiving assistance. These conditions pose a severe and imminent threat
8 to the health, safety, and economic well-being of San Franciscans and those who work in San
9 Francisco.

10 (e) This emergency ordinance is necessary to reduce the spread of COVID-19 and
11 mitigate the economic harm for individuals unable to work due to the Public health
12 emergency.

13

14 Section 2. Findings and Purpose.

15 (a) Pursuant to Order No. C19-07b, businesses with a facility in the City, except
16 Essential Businesses as defined in the Order, are required to cease all activities at facilities
17 located within the City except Minimum Basic Operations, as defined in the Order. Although
18 some businesses are able to continue operations exclusively via teleworking, many
19 employees are in positions that cannot be fulfilled through teleworking or are unable to
20 perform the required telework hours because of the need to care for a child or other family
21 member.

22 (b) President Trump signed into law the Families First Coronavirus Response Act, H.R.
23 6201, Public Law No. 116-127 (“Act”) on March 18, 2020. The Act provides emergency paid
24 sick leave to certain employees who are unable to work or telework due to the COVID-19

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1 public health emergency, but it exempts employers with 500 or more employees, leaving their
2 employees without the critical protections included in the Act.

3 (c) This emergency ordinance addresses the emergency paid leave coverage gap
4 created by the Act by extending paid leave to employees in the City who are employed by
5 businesses with 500 or more employees.

6 (d) By providing public health emergency leave to these employees, this measure will
7 address the current emergency in several regards:

8 (1) Order No. C19-07b and similar shelter-in-place orders in other Bay Area
9 counties were issued to ensure that the maximum number of people self-isolate at home to
10 slow the spread of COVID-19 to the extent possible. This emergency ordinance will ensure
11 that employees in San Francisco who are permitted to work under Order No. C19-07b and
12 other such orders are financially able to stay home and isolate if exposed to COVID-19 or
13 exhibiting symptoms related to COVID-19. This need is particularly critical to ensure that
14 workers for certain essential businesses, including food service and grocery employees, are
15 able to stay home if exposed to COVID-19 or exhibiting symptoms related to COVID-19.
16 Studies have shown that employees with lower rates of access to paid leave are more likely to
17 go to work sick than those with higher rates of access to paid leave. By increasing employee
18 access to paid leave during the current COVID-19 emergency, this emergency ordinance will
19 reduce the likelihood that infected employees will report to work, and will therefore decrease
20 the spread of COVID-19 through interactions with fellow employees or members of the public.

21 (2) Employees in San Francisco have access to paid sick leave under the City's
22 Paid Sick Leave Ordinance (Administrative Code Chapter 12W), and can use that leave for
23 many of the same purposes as public health emergency leave under this emergency
24 ordinance. However, the Act extends additional leave in the form of emergency paid sick
25 leave only to employees of businesses with fewer than 500 employees and employees of

1 public agencies. The Act does not cover employees of businesses with 500 or more
2 employees. This emergency ordinance will address this gap in coverage and provide
3 necessary additional protection for employees of businesses with 500 or more employees,
4 and thereby help contain the spread of COVID-19.

5 (3) With the closure of schools by the San Francisco Unified School District and
6 other Bay Area school districts, as well as the closure of other facilities providing education,
7 childcare, elder care, or other family caregiving support, workers across the City are facing a
8 growing caregiving emergency. By extending public health emergency leave to employees not
9 protected by the Act, this emergency ordinance makes it more likely that those employees will
10 be able to care for their loved ones and ensure those loved ones stay home, and thereby
11 minimize the spread of COVID-19 in the community.

12 (4) This emergency ordinance will also address the current financial crisis of
13 those employees in San Francisco not protected by the Act who are struggling to make ends
14 meet due to widespread closures, lack of access to childcare and elder care, and other
15 workplace disruptions, which are likely to continue to affect employees after the expiration of
16 Order No. C19-07b and other shelter-in-place orders in Bay Area counties.

17

18 Section 3. Definitions.

19 For purposes of this emergency ordinance, the following definitions apply.

20 “Act” means the federal Families First Coronavirus Response Act, H.R. 6201, Public
21 Law No. 116-127, signed into law by the President on March 18, 2020.

22 “Agency” means the Office of Labor Standards Enforcement.

23 “City” means the City and County of San Francisco.

24 “Employee” means any person, including part-time and temporary workers, who has
25 performed 56 or more hours of work as an employee within the geographic boundaries of the

1 City during the 365 days immediately preceding the effective date of this emergency
2 ordinance. "Employee" includes a participant in a Welfare-to-Work Program when the
3 participant is engaged in work activity that would be considered "employment" under the
4 federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and any applicable U.S.
5 Department of Labor Guidelines. "Welfare-to-Work Program" includes any public assistance
6 program administered by the Human Services Agency, including but not limited to CalWORKS
7 and the County Adult Assistance Program (CAAP), and any successor programs that are
8 substantially similar to them, that require a public assistance applicant or recipient to work in
9 exchange for their grant.

10 "Employer" means any person, as defined in Section 18 of the California Labor Code,
11 including corporate officers or executives, who directly or indirectly or through an agent or any
12 other person, including through the services of a temporary services or staffing agency or
13 similar entity, employs or exercises control over the wages, hours, or working conditions of an
14 employee. Notwithstanding the prior sentence, "Employer" shall not include any person that is
15 a "Covered Employer," as that term is defined in Section 5110(2)(B) of the Act.

16 "Family Member" means any person for whom an Employee may use paid sick leave to
17 provide care pursuant to Administrative Code Section 12W.4(a).

18 "Public Health Emergency" means the local emergency Mayor London Breed
19 proclaimed on February 25, 2020, with the concurrence of the Board of Supervisors on March
20 3, 2020.

21 "Public Health Emergency Leave" means paid leave provided by an Employer to an
22 Employee for the uses described in Section 5(a) of this emergency ordinance.

23
24 Section 4. Public Health Emergency Leave Requirements.
25

1 (a) Except as provided in subsection (b), beginning on the effective date of this
2 emergency ordinance, an Employer shall provide each Employee with Public Health
3 Emergency Leave for all purposes specified in Section 5(a) in amounts calculated as specified
4 in Sections 5102(b)(2) and 5110(5)(C) of the Act, as may be amended from time to time.

5 (b) An Employer of an Employee who is a health care provider or an emergency
6 responder may elect to exclude such Employee from the application of this emergency
7 ordinance. "Health care provider" has the meaning given to such term in section 101 of the
8 Family and Medical Leave Act of 1993, 29 U.S.C. § 2611, as may be amended from time to
9 time.

10 (c) Public Health Emergency Leave shall be made available to Employees of the
11 Employer in addition to any paid time off that the Employer offered or provided to Employees
12 on or before the effective date of this emergency ordinance. An Employer may not change
13 any paid time off policies on or after the effective date of this emergency ordinance except to
14 provide additional paid leave.

15 (d) An Employee may use Public Health Emergency Leave for the purposes described
16 in Section 5(a) before using other accrued paid time off. An Employee may voluntarily choose,
17 but an Employer may not require the Employee, to use other accrued paid time off provided
18 by the Employer to the Employee before the Employee uses Public Health Emergency Leave.

19 (e) This emergency ordinance provides minimum requirements pertaining to Public
20 Health Emergency Leave and shall not be construed to prevent an Employer from providing or
21 advancing additional paid time off to an Employee, and shall not be construed to limit the
22 amount of paid time off that may be provided to an Employee.

23 (f) Upon an Employee's separation from employment, an Employer is no longer
24 obligated to provide or pay for any Public Health Emergency Leave not used prior to
25 separation.

1 (g) Public Health Emergency Leave as required by this emergency ordinance shall
2 expire upon the expiration of this emergency ordinance, unless an Employer extends an
3 Employee's access to such leave.

4 (h) An Employer shall compensate Employees for Public Health Emergency Leave in
5 the manner set forth for calculating paid sick leave under Administrative Code Section
6 12W.3(h).

7
8 Section 5. Public Health Emergency Leave Use.

9 (a) An Employee may use Public Health Emergency Leave to the extent that the
10 Employee is unable to work (either at the Employee's customary place of work or telework)
11 due to any of the following:

12 (1) The Employee is subject to an individual or general Federal, State, or local
13 quarantine or isolation order related to COVID-19. This includes, but is not limited to, an
14 Employee who is unable to work due to Governor Newsom's Executive Order N-33-20, the
15 shelter-in-place Order No. C19-07b or any succeeding order requiring residents to stay in their
16 homes during the emergency, or shelter-in-place orders issued in other Bay Area jurisdictions.

17 (2) The Employee has been advised by a health care provider to self-quarantine.

18 (3) The Employee is experiencing symptoms associated with COVID-19 and
19 seeking a medical diagnosis.

20 (4) The Employee is caring for a Family Member who is subject to an order as
21 described in subsection (a)(1), has been advised as described in subsection (a)(2), or is
22 experiencing symptoms as described in subsection (a)(3).

23 (5) The Employee is caring for a Family Member if the school or place of care of
24 the Family Member has been closed, or the care provider of such Family Member is
25 unavailable, due to the Public Health Emergency.

1 (6) The Employee is experiencing any other substantially similar condition
2 specified by the Local Health Officer, or under Section 5102(a)(6) of the Act, by the United
3 States Secretary of Health and Human Services.

4 (b) Public Health Emergency Leave shall be available for immediate use for the
5 purposes described in Section 5(a), regardless of how long the Employee has been employed
6 by the Employer; regardless of whether or when the employee is scheduled to work; the
7 employee's status as full-time, part-time, permanent, temporary, seasonal, salaried, paid by
8 commission, or any other status; or any other consideration pertaining to the Employee.

9 (c) An Employer may not require, as a condition of an Employee's taking Public Health
10 Emergency Leave, that the Employee search for or find a replacement worker to cover the
11 hours during which the Employee is on Public Health Emergency Leave.

12 (d) An Employer may not require, as a condition of an Employee's taking Public Health
13 Emergency Leave, that the Employee take Public Health Emergency Leave in increments of
14 more than one hour.

15 (e) An Employer may require the Employee to follow reasonable notice procedures in
16 order to use Public Health Emergency Leave, but only when the need for Public Health
17 Emergency Leave is foreseeable.

18 (f) An Employer may require an Employee to identify the basis for requesting Public
19 Health Emergency Leave, but may not require the disclosure of health information or other
20 documentation (including but not limited to a doctor's note) for absences due to the purposes
21 described in subsection (a).

22 (g) An Employer shall provide payment for Public Health Emergency Leave taken by an
23 Employee no later than the payday for the next regular payroll period after the Public Health
24 Emergency Leave is taken.

1 Section 6. Notice to Employees.

2 (a) The Agency shall, within seven days of the effective date of this emergency
3 ordinance, publish and make available on its website and through electronic communication to
4 Employers a notice suitable for Employers to inform Employees of their rights under this
5 emergency ordinance.

6 (b) Every Employer shall, within three days after the Agency has published and made
7 available the notice described in subsection (a), provide the notice to Employees in a manner
8 calculated to reach all employees: by posting in a conspicuous place at the workplace, via
9 electronic communication, and/or by posting in a conspicuous place in an Employer's web-
10 based or app-based platform.

11 (c) To the extent feasible, on the same written notice that an Employer is required to
12 provide under Section 246(i) of the California Labor Code, an Employer shall set forth the
13 amount of Public Health Emergency Leave that is available to the Employee under this
14 emergency ordinance. If an Employer provides unlimited paid time off to an Employee, the
15 Employer may satisfy this subsection (c) by indicating on the notice or the Employee's
16 itemized wage statement "unlimited." This subsection (c) shall apply only to Employers that
17 are required by state law to provide such notice to Employees regarding paid sick leave
18 available under California law.

19
20 Section 7. Exercise of Rights Protected; Retaliation Prohibited.

21 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or
22 deny the exercise of, or the attempt to exercise, any right protected under this emergency
23 ordinance.

24 (b) It shall be unlawful for an Employer or any other person to discharge, threaten to
25 discharge, demote, suspend, or in any manner discriminate or take adverse action against

1 any person in retaliation for exercising rights protected under this emergency ordinance. Such
2 rights include but are not limited to the right to use Public Health Emergency Leave pursuant
3 to this emergency ordinance; the right to file a complaint or inform any person about any
4 Employer's alleged violation of this emergency ordinance; the right to cooperate with the
5 Agency in its investigations of alleged violations of this emergency ordinance; and the right to
6 inform any person of that person's potential rights under this emergency ordinance.

7 (c) It shall be unlawful for any Employer absence control policy to count an Employee's
8 use of Public Health Emergency Leave as an absence that may lead to or result in discipline,
9 discharge, demotion, suspension, or any other adverse action.

10 (d) Protections of this emergency ordinance shall apply to any person who mistakenly
11 but in good faith alleges violations of this emergency ordinance.

12 (e) Taking adverse action against a person within 90 days of the person's filing a
13 complaint with the Agency or a court alleging a violation of any provision of this emergency
14 ordinance; informing any person about an Employer's alleged violation of this emergency
15 ordinance; cooperating with the Agency or other persons in the investigation or prosecution of
16 any alleged violation of this emergency ordinance; opposing any policy, practice, or act that is
17 unlawful under this emergency ordinance; or informing any person of that person's rights
18 under this emergency ordinance shall raise a rebuttable presumption that such adverse action
19 was taken in retaliation for the exercise of one or more of the aforementioned rights.

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21 Section 8. Records, Implementation, and Enforcement.

22 (a) Employers shall retain records related to Public Health Emergency Leave in the
23 same manner and to the same extent as records that must be retained under Administrative
24 Code Section 12W.6 and Agency rules and guidelines governing retention of such records.

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1 (b) The Agency is authorized to implement and enforce this emergency ordinance and
2 may promulgate rules and guidelines for such purposes. Except as otherwise provided by
3 Agency rules or guidelines, the administrative and civil enforcement provisions of
4 Administrative Code Section 12W.8(b)-(e) apply to this emergency ordinance. Until such time
5 as the Agency promulgates any additional rules or guidelines, the rules and guidelines
6 adopted by the Agency interpreting Administrative Code Section 12W.8 shall apply to this
7 emergency ordinance.

8
9 Section 9. Waiver Through Collective Bargaining.

10 All or any portion of the applicable requirements of this emergency ordinance shall not
11 apply to Employees covered by a bona fide collective bargaining agreement to the extent that
12 such requirements are expressly waived in the collective bargaining agreement in clear and
13 unambiguous terms.

14
15 Section 10. Preemption.

16 Nothing in this emergency ordinance shall be interpreted or applied so as to create any
17 power or duty in conflict with federal or state law. The term "conflict," as used in this Section 9
18 means a conflict that is preemptive under federal or state law.

19
20 Section 11. City Undertaking Limited to Promotion of the General Welfare.

21 In undertaking the adoption and enforcement of this emergency ordinance, the City is
22 undertaking only to promote the general welfare. The City is not assuming, nor is it imposing
23 on its officers and employees, an obligation for breach of which it is liable in money damages
24 to any person who claims that such breach proximately caused injury. This emergency
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1 ordinance does not create a legally enforceable right by any member of the public against the
2 City.

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4 Section 12. Severability.

5 If any section, subsection, sentence, clause, phrase, or word of this emergency
6 ordinance, or any application thereof to any person or circumstance, is held to be invalid or
7 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
8 affect the validity of the remaining portions or applications of this emergency ordinance. The
9 Board of Supervisors hereby declares that it would have passed this ordinance and every
10 section, subsection, sentence, clause, phrase, and word not declared invalid and
11 unconstitutional without regard to whether any other portion of this emergency ordinance or
12 application thereof would be subsequently declared invalid or unconstitutional.

13

14 Section 13. Effective Date; Expiration.

15 Consistent with Charter Section 2.107, this emergency ordinance shall become
16 effective immediately upon enactment, and shall expire on the 61st day following enactment
17 unless reenacted as provided by Section 2.107, or upon the termination of the Public Health
18 Emergency, whichever occurs first. Enactment occurs when the Mayor signs the ordinance,
19 the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of
20 receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

21

22 Section 14. Suspension of Charter Section 14.101.

23 To address the emergency conditions described above, the Board of Supervisors finds
24 that it is necessary to temporarily modify the Paid Sick Leave Ordinance (Administrative Code
25 Section 12W.16(a)), which provides that the Board of Supervisors may not amend the

1 substantive requirements or scope of that Ordinance, and to suspend the restriction in Charter
2 Section 14.101 for that limited purpose.

3

4 Section 15. Supermajority Vote Required.

5 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
6 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

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9 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

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11 By: /s/ _____
LISA POWELL
12 Deputy City Attorney

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