

LEGISLATIVE DIGEST

[Emergency Ordinance - COVID-Related Employment Protections]

Emergency ordinance to temporarily protect workers from adverse action if they test positive for COVID-19, are isolating or quarantining, or have previously isolated or quarantined, due to COVID-19 symptoms or exposure; and to protect applicants from discrimination if they test positive for COVID-19, are isolating or quarantining, or have previously isolated or quarantined, due to COVID-19 symptoms or exposure.

Existing Law

Various laws and local health orders provide some protection for workers who test positive for COVID-19 or who miss work to isolate or quarantine due to COVID-19 symptoms or exposure. These include:

- Several City local health orders and directives, most comprehensively Health Order No. C19-07f, at 5.f & Appx. A at 2.4, require employees and independent contractors, as well as various other individuals who may work at a jobsite, such as vendors, contractors, and volunteers (“personnel”), to stay home if they have symptoms associated with COVID-19; require businesses to prohibit personnel from coming to work with symptoms; and prohibit businesses from taking adverse action against personnel who stay home to comply.
- The City’s Paid Sick Leave Ordinance protects employees from retaliation for using paid sick leave, including for COVID-19-related reasons. Admin. Code § 12W.7.
- Employees are protected from retaliation if they use emergency paid sick leave related to the COVID-19 pandemic under the Families First Coronavirus Response Act (FFCRA), Pub. Law No. 116-127, §§ 1504-1505, or similar public health emergency leave under the City’s Public Health Emergency Leave Act, Ord. No. 59-20, § 7.
- Employees are protected from retaliation for taking up to 12 weeks of job-protected leave for a “serious health condition,” which “involves either inpatient care or continuing treatment” under the California Family Rights Act (CFRA). Cal. Gov. Code, § 12945.22; Cal. Code Regs. § 11087(r). Similar leave under the federal Family and Medical Leave Act is protected. 29 U.S.C. § 2612(a)(1)(D); 29 C.F.R. § 825.113(a).
- The California Fair Employment and Housing Act (FEHA) generally protects an employee with COVID-19 from harassment, discrimination, and retaliation if, because of the virus, the employee is disabled or perceived by the employer as disabled. Cal. Gov. Code § 12940(a). The Americans with Disabilities Act provides similar protections at the federal level. 42 U.S.C. § 12112.

Amendments to Current Law

This emergency ordinance does not amend current law, but it supplements current protections for employees and independent contractors (collectively, “workers”) who miss work because

they test positive for COVID-19 or to isolate or quarantine due to COVID-19 symptoms or exposure; provides new protections for applicants; and provides for enforcement mechanisms and remedies for any violations of these protections.

Background Information

This emergency ordinance protects workers from any adverse employment action if they miss work or request time off work because they test positive for COVID-19 or are isolating or quarantining, or have previously isolated or quarantined, due to COVID-19 symptoms or exposure, without regard to whether the workers would otherwise be eligible to take paid or unpaid leave. Further, employers may not count a worker's absence or inability to work for the same reasons as an absence that may result in an adverse action. Taking any adverse action against a worker within 90 days of the worker's absence from work or request for time off work for these reasons will raise a rebuttable presumption that the adverse action violates the emergency ordinance.

The emergency ordinance additionally prohibits employers from taking any adverse action against any worker because the worker tested positive for COVID-19 or is perceived to have been infected with COVID-19, without regard to whether such worker takes paid or unpaid leave. However, employers must follow the Local Health Officer's orders and guidance to require a worker to stay home if experiencing any sign or symptom of COVID-19, until the worker may return to work consistent with the Local Health Officer's guidance.

The emergency ordinance prohibits employers from asking an applicant if the applicant has tested positive for COVID-19 or is isolating or quarantining, or has previously isolated or quarantined, due to COVID-19 symptoms or exposure, or to require or recommend COVID-19 testing, prior to extending an offer to employ or contract with the applicant. Employers may not rescind an employment or contract offer, or base a decision to employ or contract with an applicant, in whole or in part on these factors. Additionally, employers must reasonably accommodate an applicant who is unable to start work because the applicant tested positive for COVID-19 or is isolating or quarantining due to COVID-19 symptoms or exposure by scheduling a later start date where reasonably feasible.

The emergency ordinance prohibits retaliation for exercising the rights protected under the emergency ordinance.

The Office of Labor Standards Enforcement will implement and enforce the emergency ordinance. The emergency ordinance provides for an enforcement process, remedies, and an administrative appeal process.

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