

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 23, 2020

File No. 200646

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

On June 16, 2020, the following proposed Initiative Ordinance for the November 3, 2020, Election was received by the Board of Supervisors' Rules Committee:

File No. 200646

Motion ordering submitted to the voters at an election to be held on November 3, 2020, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink that reads "Victor Young".

By: Victor Young, Assistant Clerk
Rules Committee

Attachment

c: Devyani Jain, Deputy Environmental Review Officer
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning
Laura Lynch, Environmental Planning

1 [Initiative Ordinance - Police Code - Public Health Emergency Leave]

2

3 **Motion ordering submitted to the voters at an election to be held on November 3, 2020,**
4 **an Ordinance to amend the Police Code to require employers to provide public health**
5 **emergency leave during a public health emergency.**

6

7 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
8 voters of the City and County of San Francisco, at an election to be held on November 3,
9 2020.

10

11 **Ordinance to amend the Police Code to require employers to provide public health**
12 **emergency leave during a public health emergency.**

13

14 NOTE: **Unchanged Code text and uncodified text** are in plain font.
15 **Additions to Codes** are in *single-underline italics Times New Roman font*.
16 **Deletions to Codes** are in ~~italics Times New Roman font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
18 parts of tables.

17

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

19 Section 1. The Police Code is hereby amended by adding Article 33L, consisting of
20 Sections 3300L.1 through 3300L.15, to read as follows:

21

22 **ARTICLE 33L: PUBLIC HEALTH EMERGENCY LEAVE**

23

24 **SEC. 3300L.1. TITLE.**

25 *This Article 33L shall be known as the “Public Health Emergency Leave Ordinance.”*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEC. 3300L.2. DEFINITIONS.

For purposes of this Article 33L, the following definitions apply:

“Agency” means the Office of Labor Standards Enforcement or its successor agency.

“Air Quality Emergency” means (a) a day when the Air Quality Index in San Francisco, as measured by the Bay Area Quality Management District, is 151 or more; or (b) with respect to an Employee who is a member of a Vulnerable Population or who works primarily outdoors, a day when the Air Quality Index in San Francisco, as measured by the Bay Area Quality Management District, is 101 or more.

“Air Quality Index” means the index for reporting daily air quality developed by the U.S. Environmental Protection Agency.

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

“Employee” means any person providing labor or services for remuneration who is an employee under California Labor Code Section 2750.3, as may be amended from time to time, including a part-time or temporary employee, who performs work as an employee within the geographic boundaries of the City. “Employee” includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered “employment” under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and any applicable U.S. Department of Labor Guidelines. “Welfare-to-Work Program” includes any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance Program (CAAP), and any successor programs that are substantially similar to them, that require a public assistance applicant or recipient to work in exchange for their grant.

“Employer” means any person, as defined in Section 18 of the California Labor and Employment Code, including corporate officers or executives, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or

1 similar entity, employs or exercises control over the wages, hours, or working conditions of an
2 Employee; provided however that “Employer” shall not include a Non-Profit Organization if the
3 majority of the annual revenue of the Non-Profit Organization is program service revenue that is not
4 unrelated business taxable income under 26 U.S.C. § 512, as may be amended from time to time, and
5 the Non-Profit Organization does not engage in Healthcare Operations. “Employer” shall include the
6 City.

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

9 “Healthcare Operations” means the provision of diagnostic and healthcare services and
10 devices including, without limitation, hospitals, medical clinics, diagnostic testing locations, dentists,
11 pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other
12 healthcare facilities, healthcare suppliers, home healthcare services providers, mental health
13 providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes
14 veterinary care and all healthcare services provided to animals. “Healthcare Operations” excludes
15 fitness and exercise gyms and similar facilities.

16 “Nonprofit Organization” means a nonprofit corporation, duly organized, validly existing and
17 in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in
18 good standing under the laws of the State of California, which corporation has established and
19 maintains valid nonprofit status under 26 U.S.C. § 501(c)(3), as may be amended from time to time,
20 and all rules and regulations promulgated under such Section.

21 “Operative Date” means January 1, 2021, the date this Article 33L becomes operative.

22 “Public Health Emergency” means either a local health emergency related to any contagious,
23 infectious, or communicable disease, declared pursuant to California Health and Safety Code Section
24 101080, as may be amended from time to time, or an Air Quality Emergency.

1 “Public Health Emergency Leave” means paid leave provided by an Employer to an Employee
2 during a Public Health Emergency for the uses described in Section 3300.L.5(a) or Section
3 3300.L.5(b), as applicable.

4 “Vulnerable Population” means a person who has been diagnosed with heart or lung disease
5 or a similar condition; has respiratory problems including but not limited to asthma, emphysema, and
6 chronic obstructive pulmonary disease; is pregnant; is age 60 or older; or with respect to a specific
7 contagious, infectious, or communicable disease is identified as particularly vulnerable or at-risk in a
8 federal, state, or local health order, rule, or guidance document.

9
10 **SEC. 3300L.3. SUNSET OF EMERGENCY ORDINANCE.**

11 If the emergency ordinance (Ordinance No. 59-20) providing Public Health Emergency Leave
12 related to the COVID-19 pandemic is reenacted and remains in effect on the Operative Date, that
13 emergency ordinance shall sunset on the Operative Date.

14
15 **SEC. 3300L.4. PUBLIC HEALTH EMERGENCY LEAVE REQUIREMENTS.**

16 (a) Allocation of Public Health Emergency Leave.

17 (1) Except as provided in subsection (a)(2) below, on the Operative Date, and on
18 January 1 of each year thereafter, an Employer shall allocate Public Health Emergency Leave to each
19 Employee that may be used for all purposes specified in Section 3300.L.5(a) or Section 3300.L.5(b), as
20 applicable, during that calendar year. The allocation shall be calculated as follows:

21 (A) For an Employee who works a full-time, regular, or fixed schedule, the
22 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
23 works or takes paid leave, not to exceed 80 hours.

24 (B) For an Employee whose number of weekly work hours varies, the allocation
25 shall be equal to the average number of hours over a two-week period that the Employee worked or

1 took paid leave during the previous calendar year, or since the Employee's start date if after the
2 beginning of the previous calendar year, not to exceed 80 hours.

3 (2) If an Employee was not employed on the date specified in subsection (a)(1) above, an
4 Employer shall allocate Public Health Emergency Leave to each such Employee that may be used for
5 all purposes specified in Section 3300.L.5(a) or Section 3300.L.5(b), as applicable, during that
6 calendar year on the start date of the first Public Health Emergency of the Employee's employment.
7 The allocation shall be calculated as follows:

8 (A) For an Employee who works a full-time, regular, or fixed schedule, the
9 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
10 works or takes paid leave, not to exceed 80 hours.

11 (B) For an Employee whose number of weekly work hours varies, the allocation
12 shall be equal to the average number of hours over a two-week period that the Employee worked or
13 took paid leave during the previous 90 days, or since the Employee's start date if the Employee has
14 been employed for fewer than 90 days, not to exceed 80 hours.

15 (b) For the duration of a Public Health Emergency, Public Health Emergency Leave shall be
16 made available to Employees in addition to any paid leave that the Employer offered or provided to
17 Employees as of the date the Public Health Emergency was declared.

18 (c) Public Health Emergency Leave shall be available for immediate use for the purposes
19 described in Section 3300.L.5(a) or Section 3300.L.5(b), as applicable, regardless of how long the
20 Employee has been employed by the Employer, the Employee's status (as full-time, part-time,
21 permanent, temporary, seasonal, salaried, paid by commission, or any other status), or any other
22 consideration pertaining to the Employee.

23 (d) An Employee may use Public Health Emergency Leave for the purposes described in Section
24 3300.L.5(a) or Section 3300.L.5(b), as applicable, before using other accrued paid leave. An Employee
25 may voluntarily choose, but an Employer may not require the Employee, to use other accrued paid

1 leave provided by the Employer to the Employee before the Employee uses Public Health Emergency
2 Leave.

3 (e) This Article 33L provides minimum requirements pertaining to Public Health Emergency
4 Leave and shall not be construed to prevent an Employer from providing or advancing additional paid
5 leave to an Employee, and shall not be construed to limit the amount of paid leave that may be
6 provided to an Employee. This Article shall not be construed to preempt, limit, or otherwise affect the
7 applicability of any other law, regulation, requirement, policy, or standard that provides for greater or
8 different types of paid or unpaid leave, or that extends other protections to employees.

9 (f) An Employer is not required to carry over unused Public Health Emergency Leave from year
10 to year.

11 (g) Compensation rates under this Article 33L shall be:

12 (1) For an Employee who is not exempt from the overtime provisions of the federal Fair
13 Labor Standards Act (FLSA) and California labor law, pay for Public Health Emergency Leave may be
14 calculated using either of the following methods:

15 (A) In the same manner as the regular rate of pay for the workweek in which the
16 Employee uses Public Health Emergency Leave, whether or not the employee works overtime in that
17 workweek; or

18 (B) By dividing the Employee's total wages, not including overtime premium pay,
19 by the Employee's total hours worked in the full pay periods of the prior 90 days of employment.

20 (2) For an Employee who is exempt from the overtime provisions of FLSA and
21 California labor law, pay for Public Health Emergency Leave shall be calculated in the same manner
22 as the Employer calculates wages for other forms of paid leave.

23 (3) In no circumstance may Public Health Emergency Leave be provided at less than the
24 minimum wage rate required by the Minimum Wage Ordinance, Administrative Code Article 12R.

1 **SEC. 3300L.5. PUBLIC HEALTH EMERGENCY LEAVE USE.**

2 (a) Except as provided in subsection (b) below, an Employee may use Public Health Emergency
3 Leave during a Public Health Emergency to the extent that the Employee is unable to work (at the
4 Employee's customary place of work, another location, or telework) due to any of the following:

5 (1) The recommendations or requirements of an individual or general federal, state, or
6 local health order (including an order issued by the local jurisdiction in which an Employee resides)
7 related to the Public Health Emergency. With respect to an Employee who is a member of a Vulnerable
8 Population, this includes following any applicable recommendations for Vulnerable Populations.

9 (2) The Employee has been advised by a health care provider to isolate or quarantine.

10 (3) The Employee is experiencing symptoms of and seeking a medical diagnosis for a
11 possible infectious, contagious, or communicable disease associated with the Public Health
12 Emergency.

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

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

19 (6) An Air Quality Emergency.

20 (b) An Employer of an Employee who is a health care provider or an emergency responder (as
21 each term is defined in 29 C.F.R. § 826.30(c), as may be amended from time to time) may elect to limit
22 such an Employee's use of Public Health Emergency Leave, but at a minimum such an Employee may
23 use Public Health Emergency Leave during a Public Health Emergency to the extent that the Employee
24 is unable to work (at the Employee's customary place of work, another location, or telework) due to
25 any of the following:

1 (1) The Employee has been advised by a health care provider (as that term is defined in
2 29 C.F.R. § 825.102, as may be amended from time to time) to isolate or quarantine.

3 (2) The Employee is experiencing symptoms of and is seeking a medical diagnosis for a
4 possible infectious, contagious, or communicable disease associated with the Public Health Emergency
5 and does not meet state or federal guidance to return to work.

6 (3) During an Air Quality Emergency, if the Employee has been advised by a health care
7 provider (as that term is defined in 29 C.F.R. § 825.102, as may be amended from time to time) not to
8 work during an Air Quality Emergency.

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 hours during
11 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 more than
14 one hour.

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

18 (f) An Employer may not require the disclosure of health information for use of Public Health
19 Emergency Leave.

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

23
24 **SEC. 3300L.6. NOTICE OF EMPLOYEE RIGHTS.**
25

1 (a) The Agency shall, no later than 30 days after the Operative Date, publish and make
2 available to Employers, in English, Spanish, Chinese, Filipino, and any other language spoken by more
3 than 5% of the San Francisco work force, a notice suitable for posting by Employers in the workplace
4 informing Employees of their rights under this Article 33L. The Agency shall update this notice on
5 December 1 of any year in which there is a change in the languages spoken by more than 5% of the San
6 Francisco workforce. In its discretion, the Agency may combine this notice with the notice required by
7 Section 12W.5(a) of the Administrative Code.

8 (b) Every Employer shall provide the notice prepared by the Agency under subsection (a) above
9 to Employees by posting it in a conspicuous place at any workplace or job site where any of its
10 Employees works, and where feasible by providing it to Employees via electronic communication,
11 which may include email, text, and/or posting in a conspicuous place in an Employer’s web-based or
12 app-based platform. Every Employer shall provide the notice in English, Spanish, Chinese, Filipino,
13 and any language spoken by at least 5% of the Employees at the workplace or job site.

14 (c) On the written notice that an Employer is required to provide under Section 246(i) of the
15 California Labor and Employment Code, as may be amended from time to time, an Employer shall set
16 forth the amount of Public Health Emergency Leave that is available to the Employee under this Article
17 33L. If an Employer provides unlimited paid leave or paid time off to an Employee, the Employer may
18 satisfy this subsection (c) by indicating on the notice or the Employee’s itemized wage statement
19 “unlimited.” This subsection (c) shall apply only to Employers that are required by state law to provide
20 such notice to Employees regarding paid sick leave available under California law.

21
22 **SEC. 3300L.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

23 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny
24 the exercise of, or the attempt to exercise, any right protected under this Article 33L.

1 (b) It shall be unlawful for an Employer or any other person to discharge, threaten to
2 discharge, demote, suspend, reduce other Employee benefits, or in any manner discriminate or take
3 adverse action against any person in retaliation for exercising rights protected under this Article 33L.
4 Such rights include but are not limited to the right to use Public Health Emergency Leave pursuant to
5 this Article 33L; the right to file a complaint or inform any person about any Employer's alleged
6 violation of this Article 33L; the right to cooperate with the Agency in its investigations of alleged
7 violations of this Article 33L; and the right to inform any person of that person's potential rights under
8 this Article 33L.

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

12 (d) Protections of this Article 33L shall apply to any person who mistakenly but in good faith
13 alleges violations of this Article.

14 (e) Taking adverse action against a person within 90 days of, the person's filing a complaint
15 with the Agency or a court alleging a violation of any provision of this Article 33L; informing any
16 person about an Employer's alleged violation of this Article; cooperating with the Agency or other
17 persons in the investigation or prosecution of any alleged violation of this Article; opposing any policy,
18 practice, or act that is unlawful under this Article; or informing any person of that person's rights
19 under this Article shall raise a rebuttable presumption that such adverse action was taken in retaliation
20 for the exercise of one or more of the aforementioned rights.

21
22 **SEC. 3300L.8. EMPLOYER RECORDS.**

23 Employers shall retain records documenting hours worked by Employees and Public Health
24 Emergency Leave taken by Employees, for a period of four years, and shall allow the Agency access to
25 such records, with reasonable notice, to monitor compliance with the requirements of this Article 33L.

1 When an issue arises as to an Employee's entitlement to Public Health Emergency Leave under this
2 Article, if the Employer does not maintain or retain accurate and adequate records documenting hours
3 worked by the Employee and Public Health Emergency Leave taken by the Employee, or does not allow
4 the Agency reasonable access to such records, it shall be presumed that the Employer has violated this
5 Article, absent clear and convincing evidence otherwise.

6
7 **SEC. 3300L.9. IMPLEMENTATION AND ENFORCEMENT.**

8 (a) The Agency shall be authorized to implement and enforce this Article 33L and may
9 promulgate guidelines or rules for such purposes. Any rules promulgated by the Agency shall have the
10 force and effect of law and may be relied on by Employers, Employees, and other persons to determine
11 their rights and responsibilities under this Article.

12 (b) An Employee or any other person, who has reason to believe that a violation of this Article
13 33L has occurred may report the suspected violation to the Agency. The Agency shall encourage such
14 reporting by keeping confidential, to the maximum extent permitted by law, the name and other
15 identifying information of the individual reporting the suspected violation; provided, however, that with
16 the authorization of the reporting individual, the Agency may disclose the name of the reporting
17 individual and identifying information as necessary to enforce this Article or for other lawful purposes.

18 (c) The Agency may investigate possible violations of this Article 33L.

19 (1) Where the Agency has reason to believe that a violation has occurred, it may order
20 any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending
21 completion of a full investigation.

22 (2) Where the Agency determines that a violation has occurred, the Agency may issue a
23 determination of violation and order any appropriate relief.

1 (A) If any Public Health Emergency Leave was unlawfully withheld, the dollar
2 amount of paid leave withheld from the Employee multiplied by three, or \$500, whichever amount is
3 greater, shall be awarded as an administrative penalty paid to the Employee.

4 (B) For violation of Section 3300L.7, OLSE shall award appropriate restitution
5 to each person subjected to the violation, including but not limited to reinstatement and back pay.

6 (C) For other violations of this Article 33L, the maximum administrative
7 penalties shall be \$500 for failure to post notice pursuant to Section 3300L.6; refusing to allow access
8 to records pursuant to Section 3300L.8; failure to maintain or retain accurate and adequate records
9 pursuant to Section 3300L.8; and any other violation not specified in this Section 3300L.9(c)(2). These
10 penalties shall be increased cumulatively by 50% for each subsequent violation of the same provision
11 by the same Employer within a three-year period.

12 (D) To compensate the City for the costs of investigating and remedying the
13 violation, the Agency may also order the Employer to pay to the City an amount that does not exceed its
14 investigation and enforcement costs. Such funds shall be allocated to the Agency and used to offset the
15 costs of implementing and enforcing this Article 33L.

16 (3) The determination of violation shall provide notice to the Employer of the right to
17 appeal the determination to the City Controller and that failure to do so within 15 days shall result in
18 the determination becoming a final administrative decision enforceable as a judgment by the superior
19 court.

20 (4) The determination of violation shall specify a reasonable time period for payment of
21 any relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of
22 such time period at the rate of interest specified in subdivision (b) of Section 3289 of the California
23 Civil Code, as may be amended from time to time.

24 (5) The remedies and penalties provided under subsection (c)(2) above are cumulative.
25

1 (6) The Agency may require that remedies and penalties due and owing to Employees be
2 paid directly to the City for disbursement to the Employees. The Controller shall hold these funds in
3 escrow for the Employees. The Agency shall make best efforts to distribute such funds to Employees. In
4 the event such funds are unclaimed for a period of three years, the Controller may undertake
5 administrative procedures for escheat of unclaimed funds under California Government Code Section
6 50050, et seq., as may be amended from time to time. Such escheated funds shall be dedicated to the
7 enforcement of this Article 33L or other laws the Agency enforces.

8 (d) Appeal Procedure. An appeal from a determination of violation (“Appeal”) may be filed by
9 the Appellant in accordance with the following procedures:

10 (1) The Appellant shall file the Appeal with the City Controller and serve a copy on the
11 Agency. The Appeal shall be filed in writing within 15 days of the date of service of the determination
12 of violation, and shall specify the basis for the Appeal and shall request that the Controller appoint a
13 hearing officer to hear and decide the Appeal. Failure to submit a timely, written Appeal shall
14 constitute concession to the violation, and the determination of violation shall be deemed the final
15 administrative decision upon expiration of the 15-day period. Further, to submit a timely, written
16 Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a complete
17 defense to any petition or claim brought against the City regarding the determination of violation.

18 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
19 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
20 resolution of the Determination of Violation.

21 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
22 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant.

23 (4) The hearing officer shall promptly set a date for a hearing. The hearing must
24 commence within 45 days of the date of the Controller’s notice of appointment of the hearing officer.
25

1 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend
2 these time limits upon a determination of good cause.

3 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing.
4 Appellant shall have the burden of proving by a preponderance of the evidence that the Agency erred in
5 its determination of violation, and/or the relief ordered therein.

6 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
7 written decision affirming, modifying, or dismissing the determination of violation. The hearing
8 officer's decision shall be the final administrative decision. The decision shall consist of findings, a
9 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
10 notice to the Employer of the right to appeal by filing a petition for a writ of mandate in San Francisco
11 Superior Court under California Code of Civil Procedure, Section 1094.5, et seq., as may be amended
12 from time to time, and that failure to file a timely appeal shall result in the final administrative decision
13 becoming enforceable as a judgment by the superior court.

14 (7) Appellant may appeal the final administrative decision only by filing in San
15 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
16 Section 1094.5, et seq., as applicable, and as may be amended from time to time.

17 (e) The final administrative decision is enforceable as a judgment in superior court. Where an
18 Employer fails to comply with a final administrative decision within the time period required therein,
19 the Agency may take any appropriate enforcement action to secure compliance, including referring the
20 action to the City Attorney to enforce the final administrative decision as a judgment, and/or except
21 where prohibited by State or Federal law, requesting that City agencies or departments revoke or
22 suspend any registration certificates, permits, or licenses held or requested by the Employer until such
23 time as the violation is remedied.

24
25 **SEC. 3300L.10. CIVIL ENFORCEMENT.**

1 The City Attorney may enforce the final administrative decision as a judgment in superior court.
2 Further, the City Attorney or any person aggrieved by a violation of this Article 33L may bring a civil
3 action in a court of competent jurisdiction against an Employer for violating any requirement of this
4 Article 33L and, upon prevailing, shall be entitled to such legal or equitable relief as may be
5 appropriate to remedy the violation including, without limitation, all forms of relief available under
6 Section 3300L.9(c), plus interest on all amounts due and unpaid at the rate of interest specified in
7 subdivision (b) of Section 3289 of the California Civil Code. The court shall award reasonable
8 attorneys' fees and costs to the prevailing party.

9
10 **SEC. 3300L.11. WAIVER THROUGH COLLECTIVE BARGAINING.**

11 All or any portion of the requirements of this Article 33L shall not apply to Employees covered
12 by a bona fide collective bargaining agreement to the extent that such requirements are expressly
13 waived in the collective bargaining agreement in clear and unambiguous terms.

14
15 **SEC. 3300L.12. PREEMPTION.**

16 Nothing in this emergency ordinance shall be interpreted or applied so as to create any power,
17 right, or duty in conflict with federal or state law. The term "conflict," as used in this Section 3300L.12
18 means a conflict that is preemptive under federal or state law.

19
20 **SEC. 3300L.13. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
21 **WELFARE.**

22 In undertaking the adoption and enforcement of this Article 33L, the City is undertaking only to
23 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
24 an obligation for breach of which it is liable in money damages to any person who claims that such
25

1 breach proximately caused injury. This Article does not create a legally enforceable right by any
2 member of the public against the City.

3
4 **SEC. 3300L.14. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Article 33L, or any
6 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
7 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
8 portions or applications of this Article. The voters hereby declare that they would have passed this
9 Article and every section, subsection, sentence, clause, phrase, and word not declared invalid and
10 unconstitutional without regard to whether any other portion of this Article or application thereof
11 would be subsequently declared invalid or unconstitutional.

12
13 **SEC. 3300L.15. AMENDMENT BY THE BOARD OF SUPERVISORS.**

14 (a) The Board of Supervisors may by ordinance amend this Article 33L with respect to matters
15 relating to its implementation and enforcement and matters relating to Employer requirements for
16 verification or documentation of an Employee's use of Public Health Emergency Leave, but not with
17 respect to this Article's substantive requirements or scope of coverage, except as stated in subsection
18 (b); provided, however, that, in the event any provision in this Article is held legally invalid, the Board
19 retains the power to adopt an ordinance concerning the subject matter that was covered in the invalid
20 provision.

21 (b) The Board of Supervisors may by ordinance amend this Article's substantive requirements
22 or scope of coverage for the purpose of adopting greater or additional substantive leave requirements
23 or broader coverage than this Article 33L. Further, the Board of Supervisors may by ordinance provide
24 for greater or different types of paid or unpaid leave, or extend other protections to employees.

1 Section 2. Effective Date and operative date.

2 The effective date of this ordinance shall be ten days after the date the official vote
3 count is declared by the Board of Supervisors. This ordinance shall become operative on
4 January 1, 2021.

5

6

APPROVED AS TO FORM:

7

DENNIS J. HERRERA, City Attorney

8

9

By: /s/ _____
LISA POWELL
Deputy City Attorney

10

11

12 n:\legana\as2020\2000498\01455339.docx

13

14

15

16

17

18

19

20

21

22

23

24

25

LEGISLATIVE DIGEST

[Initiative Ordinance - Police Code - Public Health Emergency Leave]

Motion ordering submitted to the voters at an election to be held on November 3, 2020, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Existing Law

The federal Families First Coronavirus Response 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 pandemic, but it exempts private employers with 500 or more employees. As of the date of introduction of this initiative ordinance, an emergency ordinance (Ordinance No. 59-20) addressed the gap created by the federal act's exemption of private employers with 500 or more employees by temporarily requiring private employers with 500 or more employees to provide paid public health emergency leave during the public health emergency related to COVID-19.

Amendments to Current Law

If Ordinance No. 59-20 is reenacted and remains in effect on the operative date of this ordinance, this ordinance sunsets that emergency ordinance and replaces it with provisions described below.

Background Information

This initiative ordinance replaces the emergency ordinance, with some changes. The ordinance eliminates the minimum employer size and exempts certain non-profit organizations from its requirements. Public health emergencies include local emergencies related to contagious, infectious, or communicable diseases and air quality emergencies.

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 recommendations or requirements of a health order related to the public health emergency, including any applicable recommendations for an employee who is a member of a vulnerable population.
- (2) The employee has been advised by a health care provider to isolate or quarantine.
- (3) The employee is experiencing symptoms of and seeking a medical diagnosis for a possible infectious, contagious, or communicable disease associated with the public health emergency.

- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described in (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 whose care provider is unavailable, due to the public health emergency.
- (6) An air quality emergency.

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; (2) because the employee is experiencing symptoms of an infectious, contagious, or communicable disease associated with the public health emergency, and does not meet state or federal guidance to return to work; or (3) during an air quality emergency, if the employee has been advised by a health care provider not to work.

Public health emergency leave must be provided in addition to paid leave the employer provided before the date the public health emergency is declared and must be made available for immediate use during a public health emergency. Employers are not required to roll over any unused public health emergency leave from year to year.

The Office of Labor Standards Enforcement ("OLSE") will implement and enforce the ordinance. Additionally, OLSE will publish a notice suitable for employers to inform employees of their rights under the ordinance. Employers were required to post and provide the notice to employees, in English, Spanish, Chinese, Filipino, and any language spoken by at least 5% of the employees at the worksite.

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.