

1 [Emergency Ordinance - Administrative Code - Public Health Emergency Leave]

2

3 **Emergency Ordinance amending the Administrative Code to require private employers**
4 **with 500 or more employees to provide additional paid leave during public health**
5 **emergencies declared by state or local authorities, provide adequate noticing of such**
6 **benefits to their employees, and to protect such rights from retaliation.**

7

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

12

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

14

15 Section 1. The Administrative Code is hereby amended by adding Chapter 122,
16 consisting of Sections 122.1 through 122.14, to read as follows:

17

18 **CHAPTER 122: PUBLIC HEALTH EMERGENCY LEAVE**

19

20 **SEC. 119.1. DEFINITIONS.**

21 *For purposes of this Chapter, the following definitions apply.*

22

23 *(a) "Agency" shall mean the Office of Labor Standards Enforcement or any department or*
24 *office that by ordinance or resolution is designated the successor to the Office of Labor Standards*
25 *Enforcement.*

1 (b) “City” shall mean the City and County of San Francisco.

2 (c) “Employee” shall mean any person who is employed within the geographic boundaries of
3 the City by an employer for 56 or more hours in a calendar year, including part-time and temporary
4 employees.

5 (1) “Employee” includes a participant in a Welfare-to-Work Program when the participant is
6 engaged in work activity that would be considered “employment” under the federal Fair Labor
7 Standards Act, 29 U.S.C. § 201 et seq., and any applicable U.S. Department of Labor Guidelines.

8 “Welfare-to-Work Program” shall include any public assistance program administered by the Human
9 Services Agency, including but not limited to CalWORKS and the County Adult Assistance Program
10 (CAAP), and any successor programs that are substantially similar to them, that require a public
11 assistance applicant or recipient to work in exchange for their grant.

12 (2) “Employee” includes individuals who live within the geographic boundaries of San
13 Francisco and perform work for an employer from home, including telecommuting, but only if the
14 employee performs 56 or more hours of work in San Francisco within a calendar year.

15 (d) “Employer” shall mean any person, as defined in Section 18 of the California Labor
16 Code, including corporate officers or executives, who directly or indirectly or through an agent or any
17 other person, including through the services of a temporary services or staffing agency or similar
18 entity, employs or exercises control over the wages, hours, or working conditions of 500 or more
19 employees.

20 (1) In determining the number of persons performing work for an employer during a given
21 week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall
22 be counted, including persons made available to work through the services of a temporary services or
23 staffing agency or similar entity.

24 (2) “Employer” shall not include any “public agency” under the federal Fair Labor Standards
25 Act, 29 U.S.C. §203(x), including, but not limited to, the San Francisco Unified School District.

1 (e) “Family member” shall mean a child; parent; legal guardian or ward; sibling;
2 grandparent; grandchild; spouse; registered domestic partner under any state or local law; or any
3 other individual related by blood or whose close association with the employee is the equivalent of a
4 family relationship.

5 (1) The aforementioned child, parent, sibling, grandparent, and grandchild relationships
6 include not only biological relationships but also relationships resulting from adoption; step-
7 relationships; and foster care relationships.

8 (2) “Child” also includes a child of a domestic partner and a child of a person standing in
9 loco parentis.

10 (3) “Parent” also includes a person who stood in loco parentis when the employee was a
11 minor child, and a person who is a biological, adoptive, or foster parent, stepparent, or guardian of the
12 employee’s spouse or registered domestic partner.

13 (f) “Health care professional” shall mean any person licensed under Federal or State law to
14 provide medical or emergency services, including but not limited to doctors, nurses and emergency
15 room personnel.

16 (g) “Public health emergency leave” shall mean time that is compensated pursuant to
17 subsections (i), (j), and (k) of Section 2 and is provided by an employer to an employee for the purposes
18 described in Section 3(a) of this Chapter.

19 (h) “Public health emergency” shall mean a declaration of a public health emergency by the
20 Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 U.S.C.
21 247d) or a declaration of a public health emergency or a state of emergency based on a public health
22 threat by a state or local official with the authority to declare an emergency.

23
24 **SEC. 119.2. PURPOSE AND FINDINGS.**

25 (a) Declaration of Emergency pursuant to Charter Section 2.107.

- 1 (1) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response
2 to the COVID-19 pandemic
- 3 (2) The Board of Supervisors concurred with this declaration of emergency on March 3, 2020.
- 4 (3) On March 16, 2020, the County Health Officer issued Order No. C19-07 directing San
5 Franciscans to stay in their homes and requiring businesses to cease all non-essential
6 operations at physical locations in the County.
- 7 (4) Due to the economic impacts of Order No. C19-07 on the people of the City and County of
8 San Francisco, the Board of Supervisors hereby finds and declares that an actual
9 emergency exists that requires the passage of this emergency ordinance.
- 10 (b) Description of Emergency pursuant to Charter Section 2.107.
- 11 (1) Due to the public health emergency related to COVID-19, a growing number of workers
12 across the County are unable to work or telework due to illnesses related to COVID-19,
13 shelter-in-place or quarantine orders, business closures, and family caregiving needs,
14 including closures of schools, places of care, and an inability to secure caregiving
15 assistance.
- 16 (2) Pursuant to Order of the Health Officer No. C19-07, businesses with a facility in the
17 County, except Essential Businesses as defined in the order, are required to cease all
18 activities at facilities located within the County except Minimum Basic Operations, as
19 defined in the Order. Although some businesses are able to continue operations consisting
20 exclusively of telecommuting, many employees are in positions that cannot be fulfilled
21 through telecommuting or cannot be done consistently with child care or family care.
- 22 (3) There is evidence of increasing occurrence of COVID-19 within the County and throughout
23 the Bay Area, including “a significant and increasing number of suspected cases of
24 community transmission and likely further significant increases in transmission.” In
25 addition to general work disruptions due to the shelter-in-place order and school, business,

1 and care facility closures, a growing number of workers in the County are unable to work
2 due to illnesses and symptoms related to COVID-19. Without guaranteed paid leave during
3 this public health emergency, workers will face a growing financial emergency due to these
4 workplace and caregiving disruptions.

5 (4) There is also critical need in the County to ensure that workers, even those whose
6 businesses remain open or performing minimum basic operations, are able to stay home and
7 isolate during this public health emergency or care for children or elders who do not
8 otherwise have care, especially when they have been exposed or may be showing symptoms
9 of COVID-19. Without guaranteed paid leave during this public health emergency, many
10 workers may choose to go to work rather than lose a paycheck, escalating the spread of
11 COVID-19 throughout the community.

12 (c) The efficacy of this measure in addressing the emergency pursuant to Charter Section 2.107.

13 (1) President Trump signed into law the “Families First Coronavirus Response Act” on March
14 18, 2020, which provides emergency paid leave to workers who are unable to work or
15 telework due to the COVID-19 public health emergency. Nevertheless, the law exempted
16 individuals who are employed by an employer with 500 or more employees; if this coverage
17 gap is not addressed, these individuals who are not covered by the federal law will face a
18 growing financial emergency and could act in ways that risk further transmission of
19 COVID-19.

20 (2) This emergency ordinance addresses this gap in federal law by extending paid leave to
21 individuals in the County who are employed by an employer with 500 or more employees.
22 By guaranteeing public health emergency leave to these individuals, the measure will
23 address the current emergency in several regards:

24 a. Order No. C19-07 was issued to ensure that the maximum number of people self-
25 isolate in their places of residence and slow the spread of COVID-19 to the

1 maximum extent possible. This measure will ensure that workers whose places of
2 business are not closed, are deemed essential, or are maintaining limited business
3 operations are financially able to stay home and isolate, especially when exposed to
4 COVID-19 or exhibiting symptoms related to COVID-19. During the height of the
5 H1N1 pandemic, workers with lower rates of access to paid leave were more likely
6 than those with higher rates of access to go to work sick, and as a result, the
7 pandemic lasted longer in their workplaces as the virus spread from co-worker to
8 co-worker. One study estimates that lack of workplace policies like paid leave was
9 responsible for five million cases of influenza-like illness during the pandemic.
10 Without guaranteed paid leave during the current COVID-19 emergency, workers
11 are more likely to go to work, rather than risk a paycheck, increasing the likelihood
12 of spreading illness.

13 b. Order No. C19-07 closed restaurants and cafes—regardless of their seating
14 capacity—except for takeout and delivery service. Due to the ability to provide
15 takeout and delivery service, many food industry employees are still being asked to
16 report to work, including those employed by large employers, such as fast food
17 establishments. A peer-reviewed epidemiological study found that nearly one in five
18 food service workers had come to work vomiting or with diarrhea in the past year,
19 jeopardizing the health of coworkers and customers. In addition, the largest national
20 survey of U.S. restaurant workers found that two-thirds of restaurant waitstaff and
21 cooks, nearly 90% of whom do not have paid sick time, have come to work sick. This
22 measure will address the current COVID-19 public health emergency by ensuring
23 that food industry workers who are still providing takeout and delivery, as well as
24 other workers who continue to have contact with the public and other community
25

1 members, have the financial means to stay home when they are ill or exposed to
2 COVID-19.

3 c. With the closure of schools by the San Francisco United School District, as well as
4 the closure of facilities or inability to access child care, elder care, or other family
5 caregiving support, workers across the County are facing a growing caregiving
6 emergency. This measure will provide critical financial support to individuals across
7 the County who would otherwise be torn between their job obligations and care
8 responsibilities. By guaranteeing paid public health emergency leave to workers, it
9 is more likely that those workers are able to care for their loved ones and ensure
10 those loved ones stay home, minimizing the spread of COVID-19 in the community,
11 especially by children are have a greater potential likelihood of being asymptomatic
12 carriers.

13 d. The proposed measure will also address the current financial crisis of workers
14 across the County who are struggling to make ends meet due to widespread closures,
15 lack of access to child care and elder care, and other workplace disruptions. The
16 proposed measure's paid public health emergency leave will ensure that covered
17 workers in the County, especially low-wage workers, do not face unplanned
18 financial devastation due to inability to work or the closure of schools, care
19 providers, and places of business. As reported by the Board of Governors of the
20 Federal Reserve System in 2018, 41% of adults said they would not be able to easily
21 cover an unexpected, hypothetical expense of \$400; during the current financial
22 crisis associated with the COVID-19 pandemic, many workers across the County are
23 facing even greater unexpected financial costs. Especially in households below the
24 poverty level with limited savings, loss of pay due to these workplace, school, and
25 care disruptions can be financially catastrophic. This measure can help to ease the

1 financial emergency facing workers across the County, by guaranteeing paid leave
2 during the COVID-19 pandemic that can be used to help meet basic necessities.

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5 **SEC. 119.3. AMOUNT AND USE OF PUBLIC HEALTH EMERGENCY LEAVE.**

6 (a) On the date of a public health emergency affecting the City, an employer shall provide
7 each employee of an employer with public health emergency leave in the following amount to be used
8 prior to the termination date of this Chapter under Section 119.11:

9 (1) for all purposes of leave specified in Section 119.4(a) and pursuant to subsection (i),
10 employees who normally work 40 or more hours in a week shall be provided at least 80 hours of public
11 health emergency leave, and employees who work fewer than 40 hours in a week shall be provided an
12 amount of public health emergency leave equal to the amount of time the employee is otherwise
13 scheduled to work or works on average in a 14-day period;

14 (2) following use of public health emergency leave as specified in subsection (a)(1), employees
15 shall be provided additional public health emergency leave for purposes of leave as specified in Section
16 119.4(a)(6) and pursuant to subsection (j).

17 (b) If a public health emergency was declared before and remains in effect on the effective
18 date of this Chapter, public health emergency leave under this Chapter shall be: (1) provided to
19 employees pursuant to subsection (a) on the effective date of this Chapter; and (2) made available
20 retroactively to employees employed on the effective date of this Chapter.

21 (c) In the case of a part-time employee whose schedule varies from week to week to such an
22 extent that an employer is unable to determine with certainty the number of hours the employee would
23 have worked if such employee had not taken public health emergency leave under this Chapter, the
24 employer shall use the following in place of such number for leave under subsection (a):

1 (1) Subject to subsection (c)(2), a number equal to the average number of hours that the
2 employee was scheduled per day or actually worked per day, whichever is greater, over the 6-month
3 period ending on the date on which the employee takes the public health emergency leave, including
4 hours for which the employee took leave of any type.

5 (2) If the employee did not work over such period, the reasonable expectation of the employee at
6 the time of hiring of the average number of hours per day that the employee would normally be
7 scheduled to work.

8 (d) Public health emergency leave shall be available for immediate use for the purposes
9 described in Section 119.4(a), regardless of how long the employee has been employed with the
10 employer.

11 (e) With respect to an employer that provides paid leave on the day before the effective date of
12 this Chapter, the public health emergency leave under this Chapter shall be made available to
13 employees of the employer in addition to such paid leave; and the employer may not change such paid
14 leave on or after such effective date to avoid being subject to this subsection (e). An employee may first
15 use public health emergency leave under subsection (a) for the purposes described in Section 119.4(a).
16 An employee may voluntarily choose, but an employer may not require the employee, to use other paid
17 leave, including but not limited to any accrued paid sick leave under Chapter 12W, provided by the
18 employer to the employee before the employee uses the public health emergency leave under subsection
19 (a).

20 (f) This Section shall not be construed to prevent an employer, in the employer's discretion,
21 from advancing additional public health emergency leave to an employee at other times, and shall not
22 be construed to limit the amount of public health emergency leave that may be provided to an
23 employee.

24 (g) On the same written notice that an employer is required to provide under Section 246(h)
25 of the California Labor Code, an employer shall set forth the amount of public health emergency leave

1 that is available to the employee under this Section. If an employer provides unlimited public health
2 emergency leave or unlimited paid time off to an employee, the employer may satisfy this subsection (g)
3 by indicating on the notice or the employee's itemized wage statement "unlimited." This subsection (g)
4 shall apply only to employers that are required by state law to provide such notice to employees
5 regarding paid sick leave available under state law.

6 (h) An employer is not required to provide financial or other reimbursement to an employee
7 upon the employee's termination, resignation, retirement, or other separation from employment, for
8 public health emergency leave that the employee has not used.

9 (i) For the purposes of public health emergency leave as specified in subsection (a)(1), an
10 employer shall calculate public health emergency leave using any of the following calculations:

11 (1) Public health emergency leave for nonexempt employees shall be calculated in the
12 same manner as the regular rate of pay for the workweek in which the employee uses public health
13 emergency leave, whether or not the employee actually works overtime in that workweek.

14 (2) Public health emergency leave for nonexempt employees shall be calculated by
15 dividing the employee's total wages, not including overtime premium pay, by the employee's total
16 hours worked in the full pay periods of the prior 90 days of employment.

17 (3) Public health emergency leave for exempt employees shall be calculated in the same
18 manner as the employer calculates wages for other forms of paid leave time.

19 (j) For the purposes of additional public health emergency leave as specified in subsection
20 (a)(2), an employer shall calculate the additional public health emergency leave using the following
21 calculation:

22 (1) an amount that is not less than two-thirds of an employee's regular rate of pay (as
23 determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)), and based
24 on the number of hours the employee would otherwise be normally scheduled to work (or the number of
25 hours calculated under subsection (c)).

1 (2) Additional public health emergency leave as specified in subsection (a)(2) shall not exceed
2 \$1,300 per week, unless an employer chooses to provide a greater amount.

3 (k) In no circumstance may public health emergency leave under this Chapter be provided at
4 less than the minimum wage rate required by the Minimum Wage Ordinance, Administrative Code
5 Chapter 12R.

6
7 **SEC. 119.4. PUBLIC HEALTH EMERGENCY LEAVE PURPOSES.**

8 (a) An employer shall provide to each employee employed by the employer public health
9 emergency leave to the extent that the employee is unable to work (or telecommute) due to any of the
10 following needs for leave:

11 (1) The employee is subject to an individual or general Federal, State, or local quarantine or
12 isolation order, including a shelter-in-place order, related to a public health emergency, or the place of
13 business of the employee's employer has been closed pursuant to a Federal, State, or local order
14 related to a public health emergency.

15 (2) The employee has been advised by a health care provider to self-quarantine due to concerns
16 related to a public health emergency.

17 (3) The employee is experiencing symptoms related to a public health emergency and seeking a
18 medical diagnosis.

19 (4) The employee is caring for a family member who is subject to an order as described in
20 subsection (a)(1) or has been advised as described in subsection (a)(2).

21 (5) The employee is experiencing any other substantially similar condition specified by either:
22 the Director of Public Health; or the United States Secretary of Health and Human Services in
23 consultation with the United States Secretary of the Treasury and the United States Secretary of Labor.

1 (6) The employee is caring for a child of the employee or other family member if the school or
2 place of care of the child or family member has been closed, or the care provider of such child or
3 family member is unavailable, due to public health emergency precautions.

4 (b) An employer may not require, as a condition of an employee’s taking public health
5 emergency leave, that the employee search for or find a replacement worker to cover the hours during
6 which the employee is on public health emergency leave.

7 (c) An employer may not require, as a condition of an employee’s taking public health
8 emergency leave, that the employee take public health emergency leave in increments of more than one
9 hour, unless the Agency, by rule or regulation, authorizes a larger increment in particular
10 circumstances provided that the increment is no larger than the employer may require under an
11 applicable state law.

12 (d) After the first workday (or portion thereof) an employee receives public health
13 emergency leave under this Chapter, an employer may require the employee to follow reasonable
14 notice procedures in order to continue receiving such public health emergency leave time, but only
15 when the need for public health emergency leave is foreseeable and the employer’s place of business
16 has not been closed.

17 (e) Documentation will not be required for absences due to the purposes described in this
18 section.

19 (f) An employer shall provide payment for public health emergency leave taken by an
20 employee no later than the payday for the next regular payroll period after the public health emergency
21 leave was taken.

22
23 **SEC. 119.5. NOTICE AND POSTING OF RIGHTS.**

24 (a) The Agency shall, by the operative date of this Chapter, publish and make available to
25 employers, in all languages spoken by more than 5% of the City’s workforce, a notice suitable for

1 posting by employers in the workplace informing employees of their rights under this Chapter. In
2 addition, the Agency may combine into one document the notice required by this section with Section
3 12W.5.

4 (b) Every employer shall post in a conspicuous place at any workplace or job site where any
5 employee works the notice required by subsection (a); provided, however, that in cases where the
6 employer does not maintain a physical workplace, or an employee telecommutes or performs work
7 through a web-based platform, notification shall be sent via electronic communication or posting in a
8 conspicuous place in the web-based platform. Every employer shall post this notice in English, Spanish,
9 Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

10 (c) An employer shall not be required to provide and post notice under this section if the
11 employer's business is closed due to a public health emergency.

12
13 **SEC. 119.6. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

14 (a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny
15 the exercise of, or the attempt to exercise, any right protected under this Chapter.

16 (b) It shall be unlawful for an employer or any other person to discharge, threaten to
17 discharge, demote, suspend, or in any manner discriminate or take adverse action against any person
18 in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited
19 to the right to use public health emergency leave pursuant to this Chapter; the right to file a complaint
20 or inform any person about any employer's alleged violation of this Chapter; the right to cooperate
21 with the Agency in its investigations of alleged violations of this Chapter; and the right to inform any
22 person of his or her potential rights under this Chapter.

23 (c) It shall be unlawful for an employer absence control policy to count public health
24 emergency leave taken under this Chapter as an absence that may lead to or result in discipline,
25 discharge, demotion, suspension, or any other adverse action.

1 (d) Protections of this Chapter shall apply to any person who mistakenly but in good faith
2 alleges violations of this Chapter.

3 (e) Taking adverse action against a person within 90 days of the person's filing a complaint
4 with the Agency or a court alleging a violation of any provision of this Chapter; informing any person
5 about an employer's alleged violation of this Chapter; cooperating with the Agency or other persons in
6 the investigation or prosecution of any alleged violation of this Chapter; opposing any policy, practice,
7 or act that is unlawful under this Chapter; or informing any person of his or her rights under this
8 Chapter shall raise a rebuttable presumption that such adverse action was taken in retaliation for the
9 exercise of one or more of the aforementioned rights.

10
11 **SEC. 119.7. RECORDS, IMPLEMENTATION, AND ENFORCEMENT.**

12 (a) Employers shall retain records under this Chapter related to public health emergency
13 leave consistent with and as specified under Section 12W.6 of the Administrative Code.

14 (b) The Agency shall be authorized to coordinate implementation and enforcement of this
15 Chapter and may promulgate appropriate guidelines or rules for such purposes consistent with and as
16 specified under subsections (a) through (e) of Section 12W.8 of the Administrative Code.

17
18 **SEC. 119.8. WAIVER THROUGH COLLECTIVE BARGAINING.**

19 All or any portion of the applicable requirements of this Chapter shall not apply to employees
20 covered by a bona fide collective bargaining agreement to the extent that such requirements are
21 expressly waived in the collective bargaining agreement in clear and unambiguous terms.

22
23 **SEC. 119.9. OTHER LEGAL REQUIREMENTS.**

24 This Chapter provides minimum requirements pertaining to public health emergency leave
25 and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law.

1 regulation, requirement, policy, or standard that provides for a greater amount or use by employees of
2 leave, whether paid or unpaid, or that extends other protections to employees.

3
4 **SEC. 119.10. MORE GENEROUS EMPLOYER LEAVE POLICIES.**

5 This Chapter provides minimum requirements pertaining to public health emergency leave
6 and shall not be construed to prevent employers from adopting or retaining leave policies that are
7 more generous than policies that comply with this Chapter. Employers are encouraged to provide more
8 generous leave policies than required by this Chapter.

9
10 **SEC. 119.11. EFFECTIVE DATE AND SUNSET PROVISION.**

11 This emergency ordinance shall be effective upon enactment and shall automatically expire on
12 the 61st day following passage.

13
14 **SEC. 119.12. PREEMPTION.**

15 Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in
16 conflict with federal or state law. The term “conflict,” as used in this Section means a conflict that is
17 preemptive under federal or state law. For purposes of this Section, consistent with California Labor
18 Code Section 249(d), a difference between this Chapter and the provisions of the Healthy Workplaces,
19 Healthy Families Act of 2014, as amended, California Labor Code Sections 245-249, is not a
20 preemptive conflict under state law.

21
22 **SEC. 119.13. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
23 **WELFARE.**

24 In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to
25 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,

1 an obligation for breach of which it is liable in money damages to any person who claims that such
2 breach proximately caused injury. This Chapter does not create a legally enforceable right by any
3 member of the public against the City.

4
5 **SEC. 119.14. SEVERABILITY.**

6 If any part or provision of this Chapter, or the application of this Chapter to any person or
7 circumstance, is held invalid, the remainder of this Chapter, including the application of such part or
8 provision to other persons or circumstances, shall not be affected by such a holding and shall continue
9 in full force and effect. To this end, the provisions of this Chapter are severable.

10
11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 ATTORNEY'S NAME
16 Deputy City Attorney
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