

LEGISLATIVE DIGEST

[Emergency Ordinance - COVID-Related Employment Protections]

Reenactment of emergency ordinance (Ordinance No. 162-20) 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

An emergency ordinance, Ordinance No. 162-20 (“Ordinance”), temporarily protects 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; protects applicants for the same reasons; protects workers who are perceived to have COVID-19 whether or not they miss work; and provides enforcement mechanisms and remedies for any violations of these protections. The legislative digest for the Ordinance is found in Board File No. 200765. Slightly edited, it summarizes the Ordinance as follows:

The Ordinance’s protections supplement other existing laws that provide some protection for workers in overlapping circumstances. These include:

- Several City local health orders and directives that require workers to stay home if they have symptoms associated with COVID-19; require businesses to prohibit workers from coming to a job-site with symptoms; and prohibit businesses from taking adverse action against workers 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, 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. 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 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.

The Ordinance protects workers from 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. 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 raises a rebuttable presumption that the adverse action violates the emergency ordinance. An employer may rebut this presumption by establishing a basis for the adverse action, including but not limited to the worker's performance or misconduct. An employer may require a worker to identify the general basis for the worker's absence from or inability to work, or request to take time off work, but may not require the disclosure of health information or other documentation.

The Ordinance additionally prohibits employers from taking any adverse action against any worker for the same reasons, without regard to whether such worker takes any time off work. 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.

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 whether an applicant tested positive for COVID-19 or is isolating or quarantining, or has previously isolated or quarantined, due to COVID-19 symptoms or exposure. 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 Ordinance prohibits retaliation for exercising the rights protected under the emergency ordinance.

The Office of Labor Standards Enforcement implemented and is enforcing the Ordinance, which provides for an enforcement process, remedies, and an administrative appeal process.

Amendments to Current Law

The proposed emergency ordinance reenacts Ordinance No. 162-20, with the result that it does not terminate on November 10, 2020, but rather is extended for an additional 60 days.