

File No. 200765

Committee Item No. 1

Board Item No. 3

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight
Board of Supervisors Meeting:

Date: August 20, 2020

Date: Sept. 1, 2020

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest - VERSION 2 |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Small Business Commission Response – August 11, 2020</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referrals FYI – July 22, 2020</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Presidential Action 30-day Hold Waiver Memo – July 20, 2020</u> |
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Prepared by: John Carroll

Date: August 14, 2020

Prepared by: John Carroll

Date: August 28, 2020

1 [Emergency Ordinance - COVID-Related Employment Protections]

2

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

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 font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 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. Declaration of Emergency Pursuant to Charter Section 2.107.

16 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
17 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
18 of any City or County department or office required to comply with time limitations established
19 by law.

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

24

25

1 (c) The Board of Supervisors hereby finds and declares that an actual emergency
2 exists that requires the passage of this emergency ordinance to encourage testing for COVID-
3 19 and reduce the spread of the virus.

4 Section 2. Findings and Purpose.

5 (a) The City has responded to the Public Health Emergency through a comprehensive,
6 science-based approach to mitigate the spread of COVID-19, protect the most vulnerable, and
7 gradually reopen as it is safe to do so. An essential pillar of this response is widespread
8 COVID-19 testing, to allow early identification of COVID-19 positive individuals, contact
9 tracing, and isolation and quarantine of those exposed and infected.

10 (b) Many San Francisco workers, particularly low-wage workers, may be reluctant to
11 take a COVID-19 test if they believe that a positive diagnosis and the need to quarantine may
12 result in an adverse employment action, jeopardizing their ability to provide for their families.
13 Applicants for work in San Francisco may have similar concerns.

14 (c) A recent health study of individuals living in the Mission District conducted by the
15 University of California, San Francisco, in partnership with the Latino Task Force on COVID-
16 19 and Supervisor Hillary Ronen's office, found that 82 percent of COVID-19 positive
17 individuals in the study had been financially harmed by the pandemic, and only 10 percent
18 were able to work from home. In sharp contrast, among individuals who tested negative, 53
19 percent reported no impact on their work or financial stability. The study also found that 95
20 percent of the COVID-19 positive individuals were Latinx. Nationally, people who are at
21 highest risk for infection with COVID-19 are those who cannot easily shelter in place due to
22 economic vulnerability, job loss, or because they are providing essential services.

23 (d) Essential workers have kept the City running during this dangerous time, at the risk
24 and sometimes the expense of their own health. It is critical that workers, especially essential
25

1 workers and those who cannot work remotely, be able to isolate or quarantine when needed
2 to contain the spread of COVID-19 and allow safe reopening of additional businesses.

3 (e) There is a patchwork of City, state, and federal laws that provide partial
4 employment protection to workers who cannot work because they test positive for COVID-19
5 or must isolate or quarantine due to COVID-19 symptoms or exposure, but the protection is
6 fragmented and incomplete.

7 (f) This emergency ordinance is necessary to remove a barrier to COVID-19 testing by
8 addressing workers' fear of losing employment, and job applicants' fear of not being able to
9 obtain employment, due to a COVID-19 diagnosis or the need to isolate or quarantine. This in
10 turn will protect these workers, their coworkers, their families, and the members of the public
11 with whom they interact; contain the spread of the virus; and facilitate the gradual reopening
12 of the economy.

13
14 Section 3. Definitions.

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

16 "Agency" means the Office of Labor Standards Enforcement.

17 "Applicant" means a person who has or may apply or otherwise seek to provide labor
18 or services for remuneration as a Worker for an Employer, including an Employer's former
19 Workers being considereded for employment or contracting following furlough, layoff, or other
20 separation.

21 "City" means the City and County of San Francisco.

22 "Employer" means any person, as defined in Section 18 of the California Labor Code,
23 including corporate officers or executives, who directly or indirectly or through an agent or any
24 other person, including through the services of a temporary services or staffing agency or
25 similar entity, employs, contracts with, or hires a Worker. "Employer" shall include the City.

1 "Worker" means any person providing labor or services for remuneration within the
2 geographic boundaries of the City who either (1) is an employee under California Labor Code
3 Section 2750.3, as may be amended from time to time, including a part-time, temporary
4 employee, or (2) is an independent contractor or other person who has performed at least 16
5 hours of ~~performs~~ labor or services for the applicable Employer, which are provided personally
6 by the individual independent contractor or other person based on the intellectual or manual
7 efforts of the individual rather than the sale of a product.

8
9 Section 4. Worker Protections.

10 (a) It shall be unlawful for an Employer to discharge, threaten to discharge, demote,
11 suspend, discipline, reduce employee benefits, or in any manner discriminate or take adverse
12 action against any Worker who is absent from or unable to work, or who requests time off
13 work, because the Worker tested positive for COVID-19 or is isolating or quarantining, or has
14 previously isolated or quarantined, due to COVID-19 symptoms or exposure, without regard to
15 whether such Worker would otherwise be eligible to take paid or unpaid leave under any
16 Employer benefit program or any other local, state, or federal protection.

17 (b) It shall be unlawful for an Employer to count a Worker's absence from or inability to
18 work because the Worker tested positive for COVID-19 or is isolating or quarantining, or has
19 previously isolated or quarantined, due to COVID-19 symptoms or exposure as an absence
20 that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse
21 action, without regard to whether such Worker would otherwise be eligible to take paid or
22 unpaid leave.

23 (c) Taking any adverse action against a Worker within 90 days of the Worker's absence
24 from work or the Worker's request for time off work because the Worker tested positive for
25 COVID-19 or is isolating or quarantining due to COVID-19 symptoms or exposure shall raise a

1 rebuttable presumption that such adverse action was taken in violation of this emergency
2 ordinance. An employer may rebut the presumption by establishing a basis for the adverse
3 action, including but not limited to the Worker's performance or misconduct.

4 (d) An Employer may require a Worker to identify the general basis for the Worker's
5 absence from or inability to work, or the Worker's request to take time off work, but may not
6 require the disclosure of health information or other documentation (including but not limited to
7 a doctor's note).

8 (e) It shall be unlawful for an Employer to take any adverse action against any Worker
9 because the Worker tested positive for COVID-19 or is perceived to have been infected with
10 COVID-19, without regard to whether such Worker takes paid or unpaid leave; provided,
11 however, that an Employer shall not allow a Worker who is experiencing any sign or symptom
12 of COVID-19, or who has confirmed or suspected COVID-19 infection, to return to work on-
13 site until the Worker may do so consistent with the Local Health Officer's return-to-work
14 guidance.

15
16 Section 5. Applicant Protections.

17 ~~(a) It shall be unlawful for an Employer to inquire about or require disclosure of whether~~
18 ~~an Applicant has tested positive for COVID-19 or is isolating or quarantining, or has previously~~
19 ~~isolated or quarantined, due to COVID-19 symptoms or exposure, or to require or recommend~~
20 ~~COVID-19 testing, prior to extending an offer to employ or contract with the Applicant.~~

21 (a) It shall be unlawful for an Employer to rescind an offer to employ or contract with
22 an Applicant, or to ~~base~~make a decision to employ or contract with an Applicant, based in
23 whole or in part on whether an Applicant tested positive for COVID-19 or is isolating or
24 quarantining, or has previously isolated or quarantined, due to COVID-19 symptoms or
25 exposure.

1 (b) If an Applicant is unable to start work because the Applicant tested positive for
2 COVID-19 or is isolating or quarantining due to COVID-19 symptoms or exposure, an
3 Employer shall reasonably accommodate the Applicant by scheduling a later start date where
4 reasonably feasible.

5
6 Section 6. Exercise of Rights Protected; Retaliation Prohibited.

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

10 (b) It shall be unlawful for an Employer to take any adverse action against any Worker
11 or Applicant in retaliation for exercising rights protected under this emergency ordinance,
12 including requesting or taking leave.

13 (c) Protections of this emergency ordinance shall apply to any person who mistakenly
14 but in good faith alleges violations of this emergency ordinance.

15
16 Section 7. Implementation and Enforcement.

17 (a) The Agency shall be authorized to implement and enforce this emergency
18 ordinance and may promulgate guidelines or rules for such purposes.

19 (b) A Worker, Applicant, or any other person who has reason to believe that a violation
20 of this emergency ordinance has occurred may report the suspected violation to the Agency.

21 (c) The Agency may investigate possible violations of this emergency ordinance.
22 Where the Agency has reason to believe that a violation has occurred, it may order any
23 appropriate temporary or interim relief to mitigate the violation or maintain the status quo
24 pending completion of a full investigation or hearing. Where the Agency determines that a
25 violation has occurred following an investigation, the Agency may issue a determination of

1 violation and order any appropriate relief, including the hiring of an Applicant, reinstatement of
2 a Worker, and payment of lost wages to a Worker or Applicant. Further, the Agency may order
3 the payment of an additional sum as an administrative penalty that does not exceed \$1,000
4 for the Employer's first violation, \$5,000 for the second violation, and \$10,000 for the third and
5 subsequent violations. For the purpose of this calculation, if multiple Workers or Applicants
6 are impacted by the same violation at the same time, the Agency shall treat the violation as a
7 single violation rather than multiple violations. To compensate the City for the costs of
8 investigating and remedying the violation, the Agency may also order the violating Employer
9 to pay to the City an amount that does not exceed the Agency's enforcement costs. Subject to
10 the budgetary and fiscal provisions of the Charter, such funds shall be allocated to the Agency
11 and used to offset the costs of implementing and enforcing this emergency ordinance and
12 other ordinances the Agency enforces.

13 (d) The determination of violation shall provide notice to the Employer of the right to
14 appeal the determination to the Controller and that failure to do so within 15 days shall result
15 in the determination becoming a final administrative decision enforceable as a judgment by
16 the Superior Court.

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

21 (f) The remedies and penalties provided under Section 7(c) above are cumulative.

22 (g) The Agency may require that remedies and penalties due and owing to Workers or
23 Applicants be paid directly to the City for disbursement to the Workers or Applicants. The
24 Controller shall hold these funds in escrow for the Workers or Applicants. The Agency shall
25 make best efforts to distribute such funds to Workers or Applicants. In the event such funds

1 are unclaimed for a period of three years, the Controller may undertake administrative
2 procedures for escheat of unclaimed funds under California Government Code Section 50050,
3 et seq., as may be amended from time to time. Subject to the budgetary and fiscal provisions
4 of the Charter, such escheated funds shall be dedicated to the enforcement of this emergency
5 ordinance or other laws the Agency enforces.

6
7 Section 8. Appeal Procedure.

8 (a) An Employer may file an appeal from a determination of violation (“Appeal”) in
9 accordance with the following procedures:

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

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

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

1 (4) The hearing officer shall promptly set a date for a hearing. The hearing must
2 commence within 45 days of the date of the Controller's notice of appointment of the hearing
3 officer, and conclude within 75 days of such notice, provided, however, that the hearing officer
4 may extend these time limits for good cause.

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

8 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall
9 issue a written decision affirming, modifying, or dismissing the determination of violation. The
10 hearing officer's decision shall be the final administrative decision. The decision shall consist
11 of findings, a determination, any relief ordered, a reasonable time period for payment of any
12 relief ordered, and notice to the Employer of the right to appeal by filing a petition for a writ of
13 mandate as described in subsection (7), and that failure to file a timely appeal shall result in
14 the final administrative decision becoming enforceable as a judgment by the Superior Court.

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

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

1 Section 9. Other Laws.

2 The protections provided by this emergency ordinance are separate from and in
3 addition to other employment, non-discrimination, and disability protections in City, State, and
4 Federal law. This emergency ordinance is not intended to limit the operation of any other City
5 law. Should there be any overlap in application between this emergency ordinance and
6 another City law, both laws shall be followed, except if there is a conflict between the two that
7 cannot be reconciled, the City law providing greater protection to the Worker shall take
8 precedence.

9
10 Section 10. Preemption.

11 Nothing in this emergency ordinance shall be interpreted or applied so as to create any
12 right, requirement, power, or duty in conflict with Federal or State law. The term “conflict,” as
13 used in this Section 9 means a conflict that is preemptive under Federal or State law.

14
15 Section 11. City Undertaking Limited to Promotion of the General Welfare.

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

1 Section 12. Severability.

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

10
11 Section 13. Effective Date; Expiration.

12 Consistent with Charter Section 2.107, this emergency ordinance shall become
13 effective immediately upon enactment, and shall expire on the 61st day following enactment
14 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the
15 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within
16 ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the
17 ordinance.

1 Section 14. Supermajority Vote Required.

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

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: /s/ _____
8 LISA POWELL
9 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee – August 20, 2020)

[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. C19-07g, at 4.f & Appx. A at 2.4, require employees, independent contractors, and 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, 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.

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 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. A Committee Amendment clarified that 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. Further, the Committee Amendment clarified that 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 emergency 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. As introduced, the emergency ordinance prohibited 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, but the Committee Amendment struck this provision.

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

FILE NO. 200765

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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CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

August 11, 2020

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 200765 – Emergency Ordinance - COVID-Related Employment Protections

Small Business Commission Recommendation to the Board of Supervisors: **Support with modifications.**

Dear Ms. Calvillo,

On August 10, 2020 the Small Business Commission (SBC or Commission) heard BOS File No. 200765 – Emergency Ordinance - COVID-Related Employment Protections. Paul Monge, Legislative Aide to Supervisor Hillary Ronen provided the SBC with an overview of the legislation. After discussion, the SBC voted (7-0) to recommend that the Board of Supervisors support the legislation with modifications.

Mr. Monge provided a thorough review of the legislation and the legislative intent for the Commission. In particular, he cited that this legislation was written in response to findings presented in a study conducted by the University of California, San Francisco in partnership with the Latino Task Force on COVID-19. Most strikingly, 82% of COVID-19 positive individuals in the study had been financially harmed by the pandemic and just 10% were able to work from home. Moreover, he shared that if this legislation passes, it will be administered in concert with the City's Right to Recover program which provides a two week minimum wage replacement, or \$1285, to any worker who lives in San Francisco who tests positive for COVID-19 and anticipates experiencing financial hardship. He also shared that the legislative sponsor's office would be amenable to adopting amendments contemplated in the Commission's [staff memo](#) to help avert unintended consequences for both employers and employees and ensure the efficacy of the legislation.

Ultimately, the Commission voted unanimously to support the legislation with the following modifications:

- Amend Section 4(c) of the legislation by adding language that clarifies that an employer may administer an adverse action relating to the performance or misconduct of a worker within 90 days of their absence from work or their request for time off *without* the presumption that it is in violation of the legislation.
- Strike Section 5(a), which as drafted, prohibits employers from inquiring about or requiring disclosure of whether a job 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 of employment, in order to protect the health and safety of the existing employees.

- Strike section 5(c), which as drafted, requires employers to delay a worker's start date until 'reasonably feasible' if the individual has COVID-19 or is experiencing COVID-19 symptoms, and instead defer to federal law. Federal law more precisely asserts that, employers may delay the start date for a worker who has tested positive for COVID-19, is experiencing COVID-19 symptoms, or is isolating or in quarantine. And, an employer may withdraw a job offer when the employer needs the applicant to start immediately but the individual has COVID-19 or is experiencing COVID-19 symptoms.

Thank you for considering the Commission's recommendations. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

cc: Hillary Ronen, Member, Board of Supervisors
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Pat Mulligan, Director, Office of Labor Standards and Enforcement
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Clerk, Land Use and Transportation Committee

From: [cherri_murphy](#)
To: [Carroll, John \(BOS\)](#); [RonenStaff \(BOS\)](#); [Marstaff \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Haneystaff \(BOS\)](#)
Subject: Public comment for COVID-19 worker protections hearing
Date: Thursday, August 20, 2020 5:38:46 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good morning,

My name is Minister Cherri Murphy and I am a Lyft driver. I have been driving for Lyft for approximately 3 years now with over 12,000 rides. I am asking you to include language in this ordinance that protects gig economy workers. I support the Safer Act, a law that would make it illegal for employers to fire, threaten to fire, demote, suspend, discipline, reduce employee benefits, or in any manner discriminate against workers who have COVID 19 and must quarantine. As you probably know, most rideshare workers are predominantly African American and POC, in addition to the most being hit economically. This law would support protections without fear of retaliation such as being deactivated. In times of COVID 19 we need stronger protections and the Safer Act would support that.

Thank you,
Minister Cherri Murphy
East Bay Resident/Driver

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Patrick Mulligan, Director, Office of Labor Standards Enforcement
Shakirah Simley, Director, Office of Racial Equity

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: July 22, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Ronen on July 14, 2019:

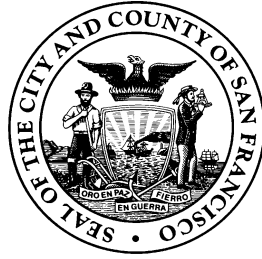
File No. 200765

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.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Offices of Supervisors Ronen and Mar

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: July 22, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 200765

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

President, District 7
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-6516
Fax No. 554-7674
TDD/TTY No. 544-6546

Norman Yee

PRESIDENTIAL ACTION

Date:

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No.

(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

Meeting

(Date)

(Committee)

Start Time:

End Time:

Temporary Assignment: Partial

Full Meeting

Norman Yee, President
Board of Supervisors

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Ronen; Mar, Yee

Subject:

Emergency Ordinance - COVID-Related Employment Protections

The text is listed:

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.

Signature of Sponsoring Supervisor: /s/ Hillary Ronen