

LEGISLATIVE DIGEST

[Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance Amendments]

Ordinance amending the Administrative Code to revise the City's Paid Sick Leave Ordinance (PSLO) to include protections for employees under the PSLO that largely parallel recent State law enactments pertaining to paid sick leave, primarily the Healthy Workplaces, Healthy Families Act of 2014, as amended.

Existing Law

The Paid Sick Leave Ordinance ("PSLO"), Administrative Code Chapter 12W, requires employers to provide paid sick leave to employees for work performed in San Francisco. New employees begin accruing sick leave 90 days after commencement of employment, at the rate of one hour per 30 hours worked, with an accrual cap of 40 hours for small businesses and 72 hours for other businesses. An employee may use paid sick leave for certain enumerated purposes and on behalf of the employee and certain other persons.

The Healthy Workplaces, Healthy Families Act of 2014, as amended ("State Law"), California Labor Code Sections 245-249, requires employers in California to provide paid sick leave to employees. It does not preempt or limit the application or enforcement of the PSLO. In some respects, the State Law provides greater protections for employees and greater scope of coverage than the PSLO. The City has no authority to enforce the State Law.

The PSLO, which was adopted by the voters, permits the Board of Supervisors to amend it regarding implementation and enforcement and employer requirements for verification or documentation of use of paid sick leave, but does not permit amendments regarding substantive requirements or scope of coverage.

Amendments to Current Law

The proposed initiative ordinance, which would become operative on January 1, 2017, includes these revisions to the PSLO that parallel or accommodate State Law, or clarify existing provisions of the PSLO:

- **Uses of paid sick leave:** Permissible uses of paid sick leave include (1) purposes defined by State Law related to domestic violence, sexual assault, or stalking suffered by the employee, and (2) purposes related to bone marrow donation or organ donation.
- **Persons for whom paid sick leave may be used:** A "parent" for whom paid sick leave may be used includes a person who (1) stood in loco parentis when the

employee was a minor child, or (2) is a biological, adoptive, or foster parent, stepparent, or guardian of the employee's spouse or registered domestic partner.

- **Start date for accrual and use of paid sick leave:** Employees (1) begin to accrue paid sick leave on the first day of employment rather than 90 days thereafter, and (2) may start using accrued paid sick leave on the 90th day of employment.
- **Upfront allocation or “advance” of paid sick leave:** If an employer provides an employee with an upfront allocation of paid sick leave, the City will treat such allocation as an “advance” on paid sick leave to be accrued under the PSLO.
- **Separation and re-hire within one year:** If a separated employee is rehired within one year, the employer must reinstate the employee’s unused paid sick leave.
- **Notice on wage statement:** Employers must provide written notice of the amount of sick leave accrued under the PSLO that is available to the employee on the same wage statement or written notice that is required of them by State Law.
- **Calculation of paid sick leave wage rate:** Employers must calculate the rate of pay for paid sick leave using the formulas provided by State Law, except the rate cannot be less than the minimum wage rate required by the Minimum Wage Ordinance.
- **Increments for use of paid sick leave:** Employers may not require employees to use paid sick leave in increments of more than one hour, unless in particular circumstances the City authorizes a larger increment that does not violate State Law.
- **Timing for payment of paid sick leave:** Employers must provide payment for sick leave no later than the next pay check after the leave was taken.
- **Workplace notice:** The City must combine into one document the workplace notice required by the PSLO with the workplace poster required by State Law, if the combined workplace notice is approved by the State.

The proposed initiative ordinance would also permit the Board of Supervisors to amend the PSLO’s substantive requirements or scope of coverage for the purpose of adopting provisions parallel to State or federal law to the extent State or federal law provides greater or additional protections or broader coverage than the PSLO. Further, the Board of Supervisors could amend the PSLO as to the amendments contained in this ordinance, if the State amends the provisions of State law on which those amendments are based.

Background Information

With the recent adoption of the State Law, most employers in San Francisco are subject to two sets of rules regarding paid sick leave, and two enforcement agencies (the Office of Labor Standards Enforcement for the PSLO, and a parallel State agency for the State Law). The general purpose of this initiative ordinance is to amend the PSLO to include certain provisions that parallel or accommodate State Law, so that, by complying with the PSLO, the employer will also be complying with the State Law. The revisions accomplish this purpose without reducing existing protections for employees under the PSLO.

n:\legana\as2015\1500804\01071903.doc