

April 3, 2020

Supervisor Gordon Mar
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca 94102

Re: File #200313, Emergency Ordinance - Administrative Code - Public Health Emergency Leave

Dear Supervisor Mar,

The San Francisco Chamber of Commerce, representing hundreds of local businesses and thousands of employees, has reviewed Supervisor Mar's Emergency Ordinance for Public Health Emergency Leave (File #200313). The measure, should it pass, would temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

The San Francisco Chamber of Commerce is supportive of the sentiment of the legislation, which is to aid employees who cannot work, telework, or are personally affected in one way or another by the COVID-19 public health crisis. However, this legislation would have the San Francisco Chamber of Commerce's full support with the following eight amendments:

1. In section 3 or 4 there needs added clarity that this legislation applies to private employers who have 500 or more employees within San Francisco.

Reasoning: In Section 2 it is made clear that this legislation is to serve as coverage for the gap created in the Families First Coronavirus Response Act, by requiring private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19. In Section 3, there is no definition within the legislation that limits it to large employers with 500 or more San Francisco employees.

Employee is currently defined as: "Employee" means any person, including part-time and temporary workers, who has performed 56 or more hours of work as an employee within the geographic boundaries of the City. There needs to be clarity that the 500 employees are San Francisco based, and the legislation is targeted for only large employers .

2. Definition of employee changed to someone who works for 30 or more days within a year to the same employer.

In Section 3 we suggest the following amendment:

Section 3 line 24: 'Employee' means any person, including part-time and temporary workers, who has performed ~~56 or more hours of work as an employee within the geographic boundaries of the City during the 365 days immediately preceding the~~

~~effective date of this emergency ordinance: 30 or more days of employed work in San Francisco within the year 2020.~~

~~5(b) Public Health Emergency Leave shall be available for immediate use for the purposes described in Section 5(a), regardless of how long the Employee has been employed by the Employer; regardless of whether or when the employee is scheduled to work; the employee's status as full-time, part-time, permanent, temporary, seasonal, salaried, paid by commission, or any other status; or any other consideration pertaining to the Employee, as long as the the employee has performed for 30 or more days of employed work within the year 2020 in San Francisco.~~

Reasoning: Section 246 of the California Labor Code reads: (a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. It follows that emergency leave should mirror state law in qualifications for paid sick leave.

3. Clarification that the emergency sick pay hours do not continue indefinitely.

In Section 13 lines 15 - 18 we propose the following amendment:

Consistent with Charter Section 2.107, this emergency ordinance shall become effective immediately upon enactment, and shall expire on the 61st day following enactment unless reenacted as provided by Section 2.107, or upon the termination of the Public Health Emergency, whichever occurs first. This ordinance's subsequent emergency leave hours shall expire upon termination of the Public Health Emergency.

Reasoning: The legislation as it stands makes the expiration date of the ordinance clear, however, it remains unclear if the emergency leave hours remain. Once the public health emergency expires, the emergency leave hours should dissolve, as employees will have previous vacation and leave remaining - as Section 4 states, "an Employer may not require the Employee, to use other accrued paid time off provided by the Employer to the Employee before the Employee uses Public Health Emergency Leave."

4. Employers that voluntarily gave additional COVID-19 related sick pay to their employees prior to the legislation will have those additional hours counted to the 80 mandated hours in the legislation.

In Section 4 we propose the following amendment:

ADD: *An Employer who voluntarily provided additional paid leave before this legislation as effect of COVID-19 will be able to count that benefit toward their obligations as specified in Sections 5102(b)(2) and 5110(5)(C) of the Act.*

Reasoning: San Francisco was one of the first cities to shelter in place. In response to this and Mayor Breed’s declaration of a State of Emergency on February 25th, many companies awarded their employees additional paid time off upon the emergence of this public health crisis. These previously awarded hours are of the same sentiment of this legislation, and thus should be allowed to count towards employers’ required emergency paid leave amount.

5. Provision clarifying that temporary workers do not get duplicate time off from both agency and company.

Clarity is needed to delineate if temporary employees are entitled to leave from both employers. As written, the legislation indicates a host company would be responsible for PHEL for agency temporary workers if it controls their “working conditions.”

6. Remove the requirement to notice on every pay stub.

In Section 6(c) we propose the following amendment:

~~(c) by indicating on the notice or the Employee’s itemized wage statement “unlimited.”~~

Reasoning: It is burdensome to ask employers to display the amount of PHEL available to employees on every pay stub. For complicated payrolls, it can take weeks of work for our Payroll team and payroll vendor (ADP) to add additional line items to a pay stub. Taking out this notice would help employers implement this legislation quickly and efficiently.

7. Employees who can work remotely are exempt.

In Section 5(a) we propose the following amendment:

Except as provided in subsection (b), and employees who are able to telework, beginning on the effective date of this emergency ordinance, an Employer shall provide each Employee with Public Health Emergency Leave for all purposes specified in Section 5(a) in amounts calculated as specified in Sections 5102(b)(2) and 5110(5)(C) of the Act, as may be amended from time to time.

Reasoning: New York passed a paid leave law (Bill No: A10153) that provides 2 weeks of time off for quarantine and/or isolation but employees who can work remotely are exempt. They would still be able to use accrued sick time if they are too sick to work.

8. Added clarity that private employers who provide unlimited leave meet the mandates of this legislation.

Reasoning: Many San Francisco based companies already offer unlimited paid time off for their employees as standard practice, which meets the sentiment of this legislation.

We share the Supervisor's concerns for workers during these unprecedented times. These amendments are suggested to help make the legislation more easily and quickly implementable for our employers in San Francisco.

The San Francisco Chamber of Commerce supports these emergency efforts, and urges you to discuss and approve the following amendments when this item comes before you at the Rules Committee to ensure a swift and effective implementation of this legislation.

On behalf of the San Francisco Chamber of Commerce, I thank you for your continued service during this public health crisis.

Sincerely,



Rodney Fong
President and CEO

CC: Mayor London Breed; Clerk of the Board, for the full Board of Supervisors