

REVISED LEGISLATIVE DIGEST
(Amended in Board, 4/14/2020)

[Emergency Ordinance - Public Health Emergency Leave]

Emergency ordinance to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

Existing Law

This emergency ordinance does not amend existing law, but it supplements paid leave provided under federal law and a City ordinance. The federal Families First Coronavirus Response Act, H.R. 6201, Public Law No. 116-127 (“Act”) requires employers to provide emergency paid sick leave to certain employees who are unable to work or telework due to the COVID-19 public health emergency, but it exempts private employers with 500 or more employees.

The San Francisco Paid Sick Leave Ordinance (PSLO), Administrative Code Chapter 12W, requires employers to provide paid leave that can be used for many of the same purposes as public health emergency leave under this emergency ordinance.

Background Information

The emergency ordinance extends additional paid leave, public health emergency leave, to employees of private employers with 500 or more employees during the public health emergency related to COVID-19. The Act extended similar leave to employees of businesses with fewer than 500 employees and public agencies. Employers must provide public health emergency leave in addition to sick leave provided under the PSLO.

Under the emergency ordinance, as amended in Committee, employees may use up to 80 hours of paid public health emergency leave if unable to work (including telework) because:

- (1) The employee is subject to a quarantine or isolation order related to COVID-19, including but not limited to the City or other Bay Area shelter-in-place orders. This includes an employee who is a member of a “vulnerable population” as defined in Order No. C19-05 who is unable to work due to recommendations in Order No. C19-05, C19-07b, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or requiring additional restrictions for vulnerable or high-risk populations.
- (2) The employee has been advised by a health care provider to self-quarantine.
- (3) The employee is experiencing symptoms associated with COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described (2), or is experiencing symptoms as described in (3).

- (5) The employee is caring for a family member if the school or place of care of family member has been closed, or the care provider of such family member is unavailable, due to the public health emergency.
- (6) The employee is experiencing any other substantially similar condition specified by the Local Health Officer, or under Section 5102(a)(6) of the Act, by the United States Secretary of Health and Human Services.

As introduced, this emergency ordinance would have allowed an employer of an employee who is a health care provider or an emergency responder to elect to exclude such employee from the emergency ordinance. As amended, the emergency ordinance instead allows such employers to limit this leave, but require employers to provide such leave when the employee is unable to work: (1) due to a health care provider's advice to self-quarantine; or (2) because the employee is experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and does not meet the Centers for Disease Control and Prevention guidance for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

Public health emergency leave must be provided in addition to paid leave the employer provided before the date of enactment, except that employers that voluntarily provided additional paid leave in response to the COVID-19 outbreak may count that leave toward the required public health emergency leave. Public health emergency leave must be made available for immediate use, and it expires with the expiration of the emergency ordinance.

The Office of Labor Standards Enforcement ("Agency") will, within seven days of the effective date of the emergency ordinance, publish and make available on its website and through email to employers a notice suitable for employers to inform employees of their rights under this emergency ordinance, as well as information about City, state, and federal resources that employees negatively impacted by the public health emergency may qualify to receive. Employers must provide the notice to employees, in English, Spanish, Chinese, and any language spoken by at least 5% of the employees who are, or prior to the public health emergency were, at the workplace or job site, within three days after it is published. The Agency will implement and enforce the emergency ordinance.

The emergency ordinance includes anti-retaliation protections that, among other provisions, prohibit interfering with any right protected under the emergency ordinance and taking any adverse action against an employee for exercising rights protected under the emergency ordinance.

On April 6, 2020, the Rules Committee duplicated this emergency ordinance in Committee, adopted non-substantive amendments, and sent Board file 200313 to the Board for approval, as well as substantive amendments that were held for a week in Committee in file 200355. On April 13, 2020, the Rules Committee reported file 200355, and on April 14, 2020, the Board voted in favor of its enactment.

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