

BOARD of SUPERVISORS



City Hall  
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San Francisco 94102-4689  
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## MEMORANDUM

TO: Sophia Kittler, Mayor's Office

FROM: Victor Young, Assistant Clerk  
Rules Committee

A handwritten signature in cursive script that reads "Victor Young".

DATE: September 25, 2020

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following proposed legislation:

**File No. 201055**

**Reenactment of emergency ordinance (Ordinance No. 59-20) 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.**

If you have 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 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

c: Rebecca Peacock, Mayor's Office  
Andres Power, Mayor's Office

1 [Emergency Ordinance - Public Health Emergency Leave]

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3 **Reenactment of emergency ordinance (Ordinance No. 59-20) to temporarily require**  
4 **private employers with 500 or more employees to provide public health emergency**  
5 **leave during the public health emergency related to COVID-19.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
7 **Additions to Codes** are in *single-underline italics Times New Roman*;  
8 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman*~~.  
9 **Board amendment additions** are in double underlined Arial font.  
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
Asterisks (\* \* \* \*) indicate the omission of unchanged Code  
subsections or parts of tables.

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11 Be it ordained by the People of the City and County of San Francisco:

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13 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

14 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in  
15 cases of public emergency affecting life, health, or property, or for the uninterrupted operation  
16 of any City or County department or office required to comply with time limitations established  
17 by law. An emergency ordinance enacted under Charter Section 2.107 automatically  
18 terminates on the 61st day after passage, but may be reenacted upon the same terms and  
19 conditions applicable to its initial enactment.

20 (b) Pursuant to Charter Section 2.107, the City enacted an emergency ordinance  
21 (Ordinance No. 59-20), the Public Health Emergency Leave Ordinance, which temporarily  
22 requires private employers with 500 or more employees to provide public health emergency  
23 leave during the public health emergency related to COVID-19. The emergency ordinance  
24 became effective when enacted, on April 17, 2020. It would have terminated automatically on  
25 June 16, 2020, but Ordinance No. 90-20 reenacted the emergency ordinance prior to its

1 termination. Then, on August 24, 2020, Ordinance No. 136-20 reenacted Ordinance No. 59-  
2 20, as reenacted by Ordinance No. 90-20, retroactive to August 15, 2020, the date that  
3 Ordinance No. 59-20, as reenacted by Ordinance No. 90-20, expired. The original emergency  
4 ordinance, Ordinance No. 59-20, will terminate automatically on October 14, 2020, unless  
5 reenacted.

6 (c) The Board of Supervisors hereby finds that the findings declared in Sections 1 and  
7 2 of Ordinance No. 59-20 and reaffirmed in Ordinance No. 90-20 and Ordinance No. 136-20  
8 remain valid and compelling, and declares further that an actual emergency continues to exist  
9 that requires the reenactment of the Public Health Emergency Leave Ordinance to reduce the  
10 spread of COVID-19 and mitigate the economic harm for individuals unable to work due to the  
11 public health emergency. COVID-19 continues to present an extremely dangerous public  
12 health risk to the community, and the adverse economic impact on workers and their families  
13 remains severe, notwithstanding gradual efforts to reopen sectors of the economy. Further,  
14 many employees continue to experience family caregiving challenges due to care facility  
15 closures, remote learning for school children, and other challenges securing caregiving  
16 assistance.

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18 Section 2. Reenactment of Emergency Ordinance.

19 Consistent with Charter Section 2.107, this emergency ordinance reenacts for an  
20 additional 60 days the emergency ordinance temporarily requiring private employers with 500  
21 or more employees to provide public health emergency leave (Ordinance No. 59-20), as  
22 reenacted by Ordinance No. 90-20 and Ordinance No. 136-20.

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1           Section 3. Effective Date; Retroactive Application; Expiration.

2           (a) If enacted prior to the expiration of Ordinance No. 59-20, as reenacted by  
3 Ordinance No. 90-20 and Ordinance No. 136-20, this reenacted emergency ordinance shall  
4 become effective immediately upon the date of expiration of Ordinance No. 59-20, and shall  
5 itself expire on the 61st day following its effective date unless reenacted as provided by  
6 Charter Section 2.107, or upon the termination of the Public Health Emergency, whichever  
7 occurs first.

8           (b) If enacted after the expiration of Ordinance No. 59-20, as reenacted by Ordinance  
9 No. 90-20 and Ordinance No. 136-20, this reenacted emergency ordinance shall become  
10 effective immediately upon enactment, shall have operative effect retroactively to the date that  
11 Ordinance No. 59-20, as reenacted, expired, and shall expire on the 61st day following the  
12 date that Ordinance No. 59-20, as reenacted, expired, unless reenacted as provided by  
13 Charter Section 2.107, or upon the termination of the Public Health Emergency, whichever  
14 occurs first.

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16           Section 4. Directions to Clerk.

17           The Clerk of the Board of Supervisors is hereby directed to place a copy of this  
18 reenacted emergency ordinance in File No. 200355 for Ordinance No. 59-20, File No. 200576  
19 for Ordinance No. 90-20, and File No. 200733 for Ordinance No. 136-20 and to make a  
20 notation cross-referencing this emergency ordinance where Ordinance Nos. 59-20, 90-20,  
21 and 136-20 appear on the Board of Supervisors website as legislation passed.

1 Section 5. Supermajority Vote Required.

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

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

8 By: /s/ \_\_\_\_\_  
9 LISA POWELL  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Emergency Ordinance - Public Health Emergency Leave]

**Reenactment of emergency ordinance (Ordinance No. 59-20) 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

An emergency ordinance, the Public Health Emergency Leave Ordinance, Ordinance No. 59-20, reenacted by Ordinance No. 90-20 and Ordinance No. 136-20, temporarily requires private employers with 500 or more employees to provide paid public health emergency leave during the public health emergency related to COVID-19.

The federal Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, 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 ordinance addresses the gap created by FFCRA's exemption of private employers with 500 or more employees.

The legislative digest for Ordinance No. 59-20 is found in Board File No. 200355. Slightly edited, it summarizes the ordinance as follows:

Under the ordinance, 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 any City health order, 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 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 the 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 FFCRA, by the United States Secretary of Health and Human Services.

The ordinance allows an employer of an employee who is a health care provider or an emergency responder to limit this leave, but requires such 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 of the ordinance, 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. The ordinance required public health emergency leave to be made available for immediate use, and it expires with the expiration of the ordinance, unless reenacted.

The Office of Labor Standards Enforcement ("OLSE") has implemented and is enforcing the ordinance. OLSE has published on its website and through email to employers a notice suitable for employers to inform employees of their rights under the 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 were required to 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 was published.

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

The ordinance became effective on April 17, 2020, was reenacted by Ordinance No. 90-20 on June 16, 2020, and again by Ordinance No. 136-20, on August 24, 2020. Ordinance No. 136-20 was retroactive to August 15, 2020, the date that Ordinance 59-20, as reenacted, expired, and will terminate automatically on October 14, 2020, unless reenacted.

#### Amendments to Existing Law

The proposed emergency ordinance reenacts Ordinance No. 59-20, as reenacted, with the result that it does not terminate on October 14, 2020, but rather is extended for an additional 60 days. If the ordinance is enacted after the expiration of Ordinance No. 59-20, as reenacted, it will have operative effect retroactively to the date that Ordinance No. 59-20, as reenacted, expired, and will expire on the 61st day following that date, unless reenacted.

# 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):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only