

BOARD of SUPERVISORS



City Hall
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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 October 6, 2020:

File No. 201150

Reenactment of emergency ordinance (Ordinance No. 162-20) 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

1 [Emergency Ordinance - COVID-Related Employment Protections]

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3 **Reenactment of emergency ordinance (Ordinance No. 162-20) to temporarily protect**
4 **workers from adverse action if they test positive for COVID-19, are isolating or**
5 **quarantining, or have previously isolated or quarantined, due to COVID-19 symptoms**
6 **or exposure; and to protect applicants from discrimination if they test positive for**
7 **COVID-19, are isolating or quarantining, or have previously isolated or quarantined,**
8 **due to COVID-19 symptoms or exposure.**

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

13

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

15

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

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

23 (b) Pursuant to Charter Section 2.107, the City enacted an emergency ordinance
24 (Ordinance No. 162-20) to temporarily protect workers and applicants in San Francisco from
25 adverse action and discrimination related to COVID-19. The emergency ordinance became

1 effective when enacted, on September 11, 2020, and it will terminate automatically on
2 November 10, 2020, unless reenacted.

3 (c) The Board of Supervisors hereby finds that the findings declared in Sections 1 and
4 2 of Ordinance No. 162-20 remain valid and compelling, and declares further that an actual
5 emergency continues to exist that requires the reenactment of the emergency ordinance to
6 remove a barrier to COVID-19 testing by addressing workers' and applicants' fear of losing
7 work opportunities, contain the spread of the virus, and facilitate the gradual reopening of the
8 economy.

9
10 Section 2. Reenactment of Emergency Ordinance.

11 Consistent with Charter Section 2.107, this emergency ordinance reenacts for an
12 additional 60 days the emergency ordinance protecting workers and applicants from adverse
13 action and discrimination related to COVID-19 (Ordinance No. 162-20).

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

16 (a) If enacted prior to the expiration of Ordinance No. 162-20, this reenacted
17 emergency ordinance shall become effective immediately upon the date of expiration of
18 Ordinance No. 162-20, and shall itself expire on the 61st day following its effective date
19 unless reenacted as provided by Charter Section 2.107.

20 (b) If enacted after the expiration of Ordinance No. 162-20, this reenacted emergency
21 ordinance shall become effective immediately upon enactment, shall have operative effect
22 retroactively to the date that Ordinance No. 162-20 expired, and shall expire on the 61st day
23 following the date that Ordinance No. 162-20 expired, unless reenacted as provided by
24 Charter Section 2.107.

1 Section 4. Directions to Clerk.

2 The Clerk of the Board of Supervisors is hereby directed to place a copy of this
3 reenacted emergency ordinance in File No. 200765 for Ordinance No. 162-20 and to make a
4 notation cross-referencing this emergency ordinance where Ordinance No. 162-20 appears
5 on the Board of Supervisors website as legislation passed.

6
7 Section 5. Supermajority Vote Required.

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

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: /s/ _____
15 LISA POWELL
16 Deputy City Attorney

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LEGISLATIVE DIGEST

[Emergency Ordinance - COVID-Related Employment Protections]

Reenactment of emergency ordinance (Ordinance No. 162-20) 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

An emergency ordinance, Ordinance No. 162-20 (“Ordinance”), temporarily protects 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; protects applicants for the same reasons; protects workers who are perceived to have COVID-19 whether or not they miss work; and provides enforcement mechanisms and remedies for any violations of these protections. The legislative digest for the Ordinance is found in Board File No. 200765. Slightly edited, it summarizes the Ordinance as follows:

The Ordinance’s protections supplement other existing laws that provide some protection for workers in overlapping circumstances. These include:

- Several City local health orders and directives that require workers to stay home if they have symptoms associated with COVID-19; require businesses to prohibit workers from coming to a job-site with symptoms; and prohibit businesses from taking adverse action against workers 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.

The 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. 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 raises a rebuttable presumption that the adverse action violates the emergency ordinance. 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. 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 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.

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

The Office of Labor Standards Enforcement implemented and is enforcing the Ordinance, which provides for an enforcement process, remedies, and an administrative appeal process.

Amendments to Current Law

The proposed emergency ordinance reenacts Ordinance No. 162-20, with the result that it does not terminate on November 10, 2020, but rather is extended for an additional 60 days.

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

Subject:

Emergency Ordinance - COVID-Related Employment Protections

The text is listed:

Reenactment of emergency ordinance (Ordinance No. 162-20) 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