

1 [Emergency Ordinance - Public Health Emergency Leave]

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3 **Reenactment of emergency ordinance (Ordinance No. 59-20 as reenacted by Ordinance**
4 **Nos. 90-20, 136-20, 217-20, and 270-20) to temporarily require private employers with**
5 **500 or more employees to provide public health emergency leave during the public**
6 **health emergency related to COVID-19, with amendments to prospectively exempt**
7 **certain non-profit organizations from the emergency ordinance and to strike a**
8 **provision allowing leave to be taken without regard to employees' work schedules.**

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*;
11 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman*~~.
12 **Board amendment additions** are in double underlined Arial font.
13 **Board amendment deletions** are in ~~Arial font~~.
14 Asterisks (* * * *) indicate the omission of unchanged Code
15 subsections or parts of tables.

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

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. 59-20), the Public Health Emergency Leave Ordinance, which temporarily
25 requires private employers with 500 or more employees to provide public health emergency

1 leave during the public health emergency related to COVID-19. The emergency ordinance
2 became effective when enacted, on April 17, 2020. It would have terminated automatically on
3 June 16, 2020, but Ordinance No. 90-20 reenacted the emergency ordinance prior to its
4 termination. On August 24, 2020, Ordinance No. 136-20 reenacted Ordinance No. 59-20, as
5 reenacted, retroactive to August 15, 2020, the date that Ordinance No. 59-20, as reenacted,
6 expired. On October 30, 2020, Ordinance No. 217-20 reenacted Ordinance No. 59-20, as
7 reenacted, retroactive to October 14, 2020, the date that Ordinance No. 59-20, as reenacted,
8 expired. On December 23, 2020, Ordinance No. 270-20 reenacted Ordinance No. 59-20, as
9 reenacted, retroactive to December 13, 2020, the date that Ordinance No. 59-20, as
10 reenacted, expired. The original emergency ordinance, Ordinance No. 59-20, as most recently
11 reenacted by Ordinance No. 270-20, will terminate automatically on February 11, 2021,
12 unless reenacted.

13 (c) The Board of Supervisors hereby finds that the findings declared in Sections 1 and
14 2 of Ordinance No. 59-20 and reaffirmed in Ordinance Nos. 90-20, 136-20, 217-20, and 270-
15 20 remain valid and compelling, and declares further that an actual emergency continues to
16 exist that requires the reenactment of the Public Health Emergency Leave Ordinance to
17 reduce the spread of COVID-19 and mitigate the economic harm for individuals unable to
18 work due to the public health emergency. COVID-19 continues to present an extremely
19 dangerous public health risk to the community, and the adverse economic impact on workers
20 and their families remains severe, notwithstanding gradual reopening of sectors of the
21 economy. Further, many employees continue to experience family caregiving challenges due
22 to care facility closures, remote learning for school children, and other challenges securing
23 caregiving assistance.

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1 Section 2. Reenactment of Emergency Ordinance.

2 Consistent with Charter Section 2.107, this emergency ordinance reenacts for an
3 additional 60 days the emergency ordinance temporarily requiring private employers with 500
4 or more employees to provide public health emergency leave (Ordinance No. 59-20, as
5 reenacted by Ordinance Nos. 90-20, 136-20, 217-20, and 270-20). and amends Sections 3, 4,
6 and 5 of such emergency ordinance to read as follows. Although both Ordinance No. 59-20
7 and this reenacted emergency ordinance are uncodified, for purposes of clarity, the respective
8 fonts for additions and deletions to the Municipal Code as stated in the “Note” that appears at
9 the beginning of this ordinance are used to show the amendments to Sections 3, 4, and 5 of
10 Ordinance No. 59-20:

11 Section 3. Definitions.

12 * * * *

13 “Employer” means any person, as defined in Section 18 of the California Labor Code,
14 including corporate officers or executives, who directly or indirectly or through an agent or any
15 other person, including through the services of a temporary services or staffing agency or
16 similar entity, employs or exercises control over the wages, hours, or working conditions of an
17 employee. Notwithstanding the prior sentence, “Employer” shall not include any person that is
18 a “Covered Employer,” as that term is defined in Section 5110(2)(B) of the Act. Further,
19 “Employer” shall not include a Non-Profit Organization if the majority of the annual revenue of
20 the Non-Profit Organization is program service revenue that is not unrelated business taxable
21 income under 26 U.S.C. § 512, as may be amended from time to time, and the Non-Profit
22 Organization does not engage in Healthcare Operations.

23 “Family Member” means any person for whom an Employee may use paid sick leave to
24 provide care pursuant to Administrative Code Section 12W.4(a).

1 “Healthcare Operations” means the provision of diagnostic and healthcare services and
2 devices including, without limitation, hospitals, medical clinics, diagnostic testing locations,
3 dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology
4 companies, other healthcare facilities, healthcare suppliers, home healthcare services
5 providers, mental health providers, or any related and/or ancillary healthcare services.

6 “Healthcare Operations” also includes veterinary care and all healthcare services provided to
7 animals. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.

8 “Nonprofit Organization” means a nonprofit corporation, duly organized, validly existing
9 and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign
10 corporation) in good standing under the laws of the State of California, which corporation has
11 established and maintains valid nonprofit status under 26 U.S.C. § 501(c)(3), as may be
12 amended from time to time, and all rules and regulations promulgated under such Section.

13 * * * *

14 Section 4. Public Health Emergency Leave Requirements.

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16 (h) The amendments contained in the reenacted emergency ordinance in Board File
17 No. 210052, to the definition of Employer, excluding certain Non-Profit Organizations, and to
18 Section 5, striking a provision allowing leave to be taken without regard to Employees’ work
19 schedules, are prospective only. Such amendments do not extinguish the right of a person to
20 pursue a complaint pursuant to Section 8 that arose prior to the effective date of such
21 amendments.

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23 Section 5. Public Health Emergency Leave Use.

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1 (c) Public Health Emergency Leave shall be available for immediate use for the
2 purposes described in Section 5(a) or Section 5(b), as applicable, regardless of how long the
3 Employee has been employed by the Employer; the employee's status as full-time, part-time,
4 permanent, temporary, seasonal, salaried, paid by commission, or any other status; or any
5 other consideration pertaining to the Employee. ~~Public Health Emergency Leave may be
6 taken regardless of whether and when the Employee is scheduled to work, provided that the
7 total number of hours of leave taken in a week may not exceed the average number of hours
8 over a one-week period that the Employee was scheduled over the previous six months
9 ending on February 25, 2020, including hours for which the Employee took leave of any type.~~

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

12 (a) If enacted prior to the expiration of Ordinance No. 59-20, as reenacted by
13 Ordinance Nos. 90-20, 136-20, 217-20, and 270-20, this reenacted emergency ordinance
14 shall become effective immediately upon the date of expiration of Ordinance No. 59-20, and
15 shall itself expire on the 61st day following its effective date unless reenacted as provided by
16 Charter Section 2.107, or upon the termination of the Public Health Emergency, whichever
17 occurs first.

18 (b) If enacted after the expiration of Ordinance No. 59-20, as reenacted by Ordinance
19 Nos. 90-20, 136-20, 217-20, and 270-20, this reenacted emergency ordinance shall become
20 effective immediately upon enactment, shall have operative effect retroactively to the date that
21 Ordinance No. 59-20, as reenacted, expired, and shall expire on the 61st day following the
22 date that Ordinance No. 59-20, as reenacted, expired, unless reenacted as provided by
23 Charter Section 2.107, or upon the termination of the Public Health Emergency, whichever
24 occurs first.

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. 200355 for Ordinance No. 59-20, File No. 200576
4 for Ordinance No. 90-20, File No. 200733 for Ordinance No. 136-20, File No. 201055 for
5 Ordinance No. 217-20, and File No. 201264 for Ordinance No. 270-20, and to make a
6 notation cross-referencing this emergency ordinance where Ordinance Nos. 59-20, 90-20,
7 136-20, 217-20, and 270-20 appear on the Board of Supervisors website as legislation
8 passed.

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10 Section 5. Supermajority Vote Required.

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

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15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: /s/ _____
18 LISA POWELL
19 Deputy City Attorney

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