



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: David Sykes

SUBJECT: PAID SICK LEAVE ORDINANCE

DATE: March 23, 2020

RECOMMENDATION

Direct the City Manager and City Attorney to return to the City Council on April 7, 2020, to consider a "sick-leave" ordinance and a companion urgency ordinance that covers persons not covered by recent federal legislation and that is effective during the COVID-19 health crisis.

BACKGROUND

On March 18, 2020, in response to the COVID-19 pandemic, and in an effort to reduce the impact of the virus on American families, the Senate passed, and the President signed into law, the Families First Coronavirus Response Act (The Act), which will be effective as early as April 2, 2020, and remain in effect until December 31, 2020.

The Act applies to all private sector employees with fewer than 500 employees and all government employers. The Act authorizes the Department of Labor to establish hardship exemptions for employers with less than 50 employees. The Labor Department indicates it will issue regulations in mid to late April and that those regulations will include hardship exemptions under certain situations for employers with less than 50 employees. Certain tax credits are available for private employers providing paid sick leave and paid FMLA leaves under the Act but public agencies are excluded from receiving this credit.

Among other things, the Act provides for emergency paid sick leave and amends the Family and Medical Family Leave Act (FMLA).

Emergency Paid Sick Leave

Relevant provisions of the Act provide that:

- An employer shall provide to each employee paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
 5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.
 - The amount of hours of paid sick time to which an employee is entitled shall be:
 - 80 hours for full-time employees
 - The number of hours equal to the number of hours that such employee works, on average, over a 2-week period for part-time employees

Employees can use paid sick time immediately for the purposes described above, regardless of how long the employee has worked for an employer.

- Sick leave payments are limited to:
 - \$511 per day and \$5,110 in the aggregate if sick leave is taken for one of the reasons stated in paragraph 1, 2, or 3
 - \$200 per day and \$2,000 in the aggregate if sick leave is taken for one of the reasons stated in 4, 5, or 6.
- Paid sick time under this section shall not carry over from one year to the next.
- There are penalties for employers who violate this law.

FMLA

An employee who has been employed for at least 30 calendar days by the employer is eligible for leave under this Act.

In addition, the Act:

- Establishes emergency job protected leave under FMLA when an employee is unable to work (or telework) due to a need to care for a minor son or daughter if the school or place of care has been closed or the child care provider is unavailable due to a public health emergency.
- Provides that the first 10 days of the new leave may be unpaid, and the period of leave will not exceed 12 weeks. After the tenth day it requires employers to pay employees for the leave in an amount of at least 2/3 of the employee's regular rate of pay for the hours the employee would normally be scheduled to work, but not to exceed \$200 per day and \$10,000 in the aggregate.
- Allows the employee to elect to substitute any accrued vacation, personal leave, or sick leave for unpaid leave.
- An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

California Sick Leave Law

California's sick leave law provides significantly less benefits than the Act with regard to responding to COVID-19.

The state's sick leave law went into effect on January 1, 2015. However, the right to begin accruing and taking sick leave under this law did not go into effect until July 1, 2015. The law requires that full-time employees, at a minimum, earn 24 hours (or 3 days) of paid sick leave per year. Employees earn a minimum of 1 hour of paid leave for every 30 hours worked and is entitled to begin using accrued paid sick time beginning on the 90th day of employment.

To qualify for sick leave, an employee must:

- Work for the same employer, on or after January 1, 2015, for at least 30 days within a year in California, and
- Satisfy a 90-day employment period (similar to a probationary period) before taking any sick leave.

All employees who work at least 30 days for the same employer within a year in California, including part-time, per diem, and temporary employees, are covered by this new law with some specific exceptions.

The City provides a more generous sick leave benefit for its full-time and part-time employees. In response to the COVID-19 pandemic, City employees who are unable to work for various reasons, will be paid administrative leave through March 30, 2020, and the City will be considering extending this time period prior to that date. This includes employees who are quarantined or ill; are caring for ill family members or children who are out of school, or are unable to telecommute due to the nature of their work. Essential and non-essential employees who continue to work in the workplace or via telecommuting will be paid regular time.

Proposed Sick Leave Ordinance

On March 12, 2020, Councilmembers Esparza, Carrasco, and Arenas issued a “Paid Sick Leave Ordinance” memorandum to the Rules and Open Government Committee that would direct the City Attorney to return to City Council on April 7, 2020 with an ordinance and a companion urgency ordinance to allow employees in San José to earn paid sick time to address their personal and family health needs and prevent unnecessary death and illness during public health emergencies, including from the novel coronavirus (COVID-19) pandemic.

ANALYSIS

Paid Sick Leave laws exist at the federal, state, and local levels, including but not limited to, Family and Medical Leave Act, California Paid Sick Leave law, and Paid Sick Leave ordinances in San Francisco, Oakland, Berkeley, San Diego, Santa Monica, and Emeryville. While all provide paid sick leave to employees who are unable to work due to illness of themselves or others, as well as school or place of care are shut downs, each law has different coverage, accrual rates, maximum accrual hours, usage requirements, effective dates, and “carryover” provisions.

An analysis of the laws and ordinance can be found in Attachment A. What is clear is that, at least with regard to COVID-19 and the employers/employees covered by the recent Federal Act, the Federal Act contains more generous sick leave benefits than the California sick leave law and the existing local sick leave ordinances.

In order to develop a functioning and enforceable Paid Sick Leave Ordinance, staff requires analysis and stakeholder engagement to address the following concerns:

- Impacts to the public health crisis and economy;
- Clarifying definitions of covered employees, appropriate usage, etc.;
- Accrual of Sick Leave;
- Usage of Sick Leave;
- Effective dates/ Duration (e.g. ordinance, accrual start, “emergency” end date, etc.);

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- Payout of unused sick leave;
- “Carryover” provisions;
- Exemptions (e.g. size, type, location);
- Outreach and engagement; and
- Enforcement requirements and resources.

Staff recognizes the importance and urgency of the item and will work diligently on development of recommendations for City Council decision. Staff will analysis, engage stakeholders, monitor federal and state legislation, and return to the Rules and Open Government Committee on April 1, 2020.

COORDINATION

Staff has coordinated with the City Attorney Office, Office of Economic Development, Department of Public Works, Office of Employee Relations, and Human Resources.


David Sykes
City Manager

For questions, please contact, Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

Attachment A

	Covered Employees	Accrual Rate	Accrual Max/Min	Employee Usage	Carryover
San Francisco	Performs work within the City Limits	1 hour of sick leave for every 30 hours worked	>10 employees= 40 hours >11 employees= 72 hours	90 days after employment	N/A
Oakland	2 hours within the City Limits; or subject to Minimum Wage	1 hour of sick leave for every 30 hours worked	>10 employees= 40 hours >11 employees= 72 hours	N/A	Yes- the max accrual rate
Berkeley	2 hours within the City Limits; or subject to Minimum Wage	1 hour of sick leave for every 30 hours worked	<25 employees= 48 hours >26 employees= 72 hours	90 days after employment	Yes- the max accrual rate
San Diego	2 hours within the City Limits; or subject to Minimum Wage	1 hour of sick leave for every 30 hours worked	N/A	90 days after employment	Yes
Santa Monica	2 hours within the City Limits; or subject to Minimum Wage	1 hour of sick leave for every 30 hours worked	<25 employees= 48 hours >26 employees= 72 hours	90 days after employment	Yes- the max accrual rate
Emeryville	2 hours within the City Limits; or subject to Minimum Wage	N/A	<55 employees= 48 hours >55 employees= 72 hours	90 days after employment	Yes
Families First Coronavirus Response Act	Employed for minimum of 30 days	Full time= 80 hour (Min) Part time= number of average hours worked in a two week period	Applies to businesses under 500 employees <50 employees may be exempt	N/A	No
CA Sick Leave	Employed for a minimum of 30 days in a calendar year	1 hour of sick leave for every 30 hours worked	24 hour (Min)	90 days after employment	Yes
Proposed Ordinance	2 hours within the City Limits; or covered under Sections 2750.3 and 245.5 of the California Labor Code	1 hour of sick leave for every 30 hours worked	80 hours (max) or equal to number of average hours worked in a two week period	90 days after employment	Yes