



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Esparza
Councilmember Carrasco
Councilmember Arenas

SUBJECT: PAID SICK LEAVE ORDINANCE

DATE: March 27, 2020

Approved


Maya Esparza

Date 3/27/20

RECOMMENDATION

Direct staff to accept the 3/25 memo from Mayor Sam Liccardo with the following adjustments:

- i. Replace #1 with the following (deletions in ~~strike-through~~ and additions in **bold**):
“Return at the next Council meeting to enact, pursuant to the City's emergency powers, an urgency ordinance that requires employers that are lawfully permitted to continue operations under the County and State stay-home mandates, **in line with recently passed federal law**, to provide **immediate** sick leave of:
 - ~~An immediate grant of 40 hours of sick leave;~~
 - ~~An additional hour of sick leave for every two hours worked, up to a cap of 80 hours sick leave is reached; until the expiration of the City's state of emergency.~~
 - **80 hours of paid sick time (the equivalent of 10 eight-hour days) for full-time employees; and**
 - **For all part-time workers, the number of hours that an employee works on average, over a 2-week period.”**
- ii. Replace #2 with the following (deletions in ~~strike-through~~ and additions in **bold**):
“The following employers will be exempt from this mandate:
 - Any employer that has already enacted a policy that provides **access to flexible** paid personal leave of at least **80 hours**, including **sick days**, PTO & Vacation, for **all employees who have access to equal to the amount described above at the time such an ordinance goes into effect.**
 - **If any employees have access to less than the total paid leave described above at the time the ordinance goes into effect, the employer should be required to**

provide additional paid time off, which could be accessed only during the duration of the emergency and used before using other available leave, to equal the total hours of paid sick leave described above.

• Any employer not permitted to operate or employ people at a California work site pursuant to current State/County public health mandates;”

iii. Add the following:

“6. Paid sick leave should be available to all employees, as provided under Sections 2750.3 and 245.5(a)(2) of the California Labor Code, who have worked at least two hours within the geographic boundaries of San Jose for an employer.”

DISCUSSION

We thank Mayor Liccardo for his proposal for an emergency paid sick leave as part of the City’s efforts to do everything possible to protect the public, workers and our business community in this time of emergency. We have a unique opportunity to ensure all essential workers have access to paid sick days at a time when it is important for all who are sick or may be feeling the onset of symptoms remain home and self-isolate for as many as 14 days as prescribed by our medical and public health professionals.

Importantly, as we consider the impacts of this public health crisis on our immigrant communities, we note that immigration status does not affect one’s access to or ability to utilize sick leave, unlike access to other mitigation measures such as unemployment insurance. Thus access to paid sick leave is an especially crucial measure for those in our immigrant communities during this time.

Thanks to the Families First Corona Response Act which was signed into law on March 18th, we also have the unique opportunity to ensure that our small and medium sized business can be repaid for any paid sick leave they provide, along the lines of what is described in that federal law, through fully refundable Federal payroll tax credits on a quarterly process.

Following up on our discussion in the Rules Committee Meeting on March 25th, in order to make things easier for our employers and for workers, we recommend slightly amending the proposal from Mayor Liccardo to more closely align with the definitions and schedules for paid leave described in the recently passed federal law, in terms of how much leave workers should have access to and how those businesses with existing paid leave programs could adopt to the current needs of the COVID-19 response. More closely aligning these definitions and procedures could ensure that we are not overly burdening our businesses and workers with understanding the differences between the two sets of standards and to ensure that future Federal rulemaking does not prohibit our small or medium businesses from seeking the full amount of refundable Federal tax credits they are due.

Lastly, we believe it is important to follow the example of the state of California’s existing paid sick leave policy and recently passed state labor law in defining who should be covered as an employee by this new emergency paid sick leave protection. Again, in a time of emergency it is important to align our policy with these standards to ensure a fair set of rules for workers and employers alike.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.