



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** PAID SICK LEAVE ORDINANCE

**DATE:** April 1, 2020

---

## **SUPPLEMENTAL**

### **REASON FOR SUPPLEMENTAL**

The Recommendation forwarded to City Council by the Rules Committee includes direction to staff to consider and propose to Council whether to impose a lower sick leave cap or an exemption for small employers, at a threshold it shall propose to Council, after consultation with public health officials or experts.

### **RECOMMENDATION**

Council should adopt an ordinance requiring employers that are lawfully permitted to continue operations under the County and State stay-home mandates to provide sick leave to persons not covered by recent federal legislation and that is effective during the COVID-19 health crisis without any exemption for small employers.

### **OUTCOME**

Adoption of an ordinance without an exemption for small employers would require all employers that are lawfully permitted to continue operations under the County and State stay-home mandates provide sick leave to 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), effective April 1, 2020, and will remain in effect until December 31, 2020.

The Act applies to all private sector employees with fewer than 500 employees and all government employers and 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 under the Act.

### 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

### California Sick Leave Law

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

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 are entitled to begin using accrued paid sick time beginning on the 90<sup>th</sup> day of employment.

To qualify for sick leave, an employee must:

- Work for the same employer 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

### Proposed Sick Leave Ordinance

The proposed sick leave ordinance would require those businesses lawfully permitted to continue operations under the County and State stay home mandates provide sick leave to persons not covered by recent federal legislation and that is effective during the COVID-19 health crisis.

### ANALYSIS

The proposed ordinance would require employers that are lawfully permitted to continue operations under the County and State stay-home mandates provide 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 of sick leave is reached until the expiration of the City's state of emergency

The following employers would be exempt from this mandate:

- Employers who have already enacted a policy that provides a maximum paid personal leave of at least 160 hours, including PTO and vacation
- Any employer not permitted to operate or employ people at a California work site pursuant to current County and State public health mandates

In reviewing whether an exemption and/or lower accrual cap should be applied to small businesses operating within the City, staff considered:

- Impacts to the public health crisis and economy
- Number of small businesses operating within the City
- Resources available to compensate essential business for this additional emergency sick leave expense

#### Impacts to Public Health Crisis and Economy

The current State of Emergency and the public health threat posed by infected workers necessitate additional action by the City to minimize the risk for businesses lawfully permitted to continue operations under the County and State stay-home mandates. Workers at essential businesses, if sick, should stay at home to protect essential business operations and the public health. Protecting the public health is the most important step the community can take toward getting the economy started up again.

#### Sizeable Part of Local Economy

Exempting even the smallest businesses (less than 10 employees) will exempt a sizeable part of San Jose's local economy. For all sectors, businesses with less than 10 employees comprise 24% of citywide employment (100,934 employees). Businesses with less than 35 employees comprise 38% of employment (261,946 employees); businesses with 50 or less employees are 44% of total employment (188,487 employees).

For the full/limited restaurant sector (considered an Essential Business under the County Order and encouraged to remain open), the share of employment in small businesses is significantly higher.

<b>San Jose All Businesses</b>	<b># Employment</b>	<b>% Employment</b>
2-10 Employees	100,934	24%
2-35 Employees	161,012	38%
2-50 Employees	188,487	44%
Total: 2+ Employees	428,152	

<b>San Jose Restaurants</b>	<b># Employment</b>	<b>% Employment</b>
2-10 Employees	8,908	38.0%
2-35 Employees	16,612	70.9%
2-50 Employees	19,115	81.6%
Total: 2+ Employees	23,426	

#### Resources Available to Small Businesses

On March 27, 2020, as part of the third stimulus package, Congress approved \$350 billion in federal loans and grants available to small businesses including:

- ***Emergency Economic Injury*** grant or forgivable loan program that provides \$10,000 of assistance to any eligible small business, sole proprietor or non-profit submitting an Economic Injury Disaster Loan Application to SBA. Though subject to further guidance, it appears that the \$10,000 may be used to keep employees on payroll, pay for sick leave, meet increased production costs due to supply chain disruptions or pay business obligations including debts, rents or mortgage payments.
- ***Paycheck Protection Program (PPP)*** to provide cash flow assistance through a 100 percent federally guaranteed loan to employers who maintain payroll during the COVID-19 emergency. The PPP provides for up to 8 weeks of loan forgiveness based on employee retention and salary levels, has no fees, and features 6 to 12 month deferral of principal and interest. Sole proprietors and non-profits are also eligible to apply for this programs. Loans are available through June 30, 2020. Loan amounts are available up to \$10 million per business.
- ***Silicon Valley Strong Small Business Grant Program***. In addition, the Silicon Valley Strong small business grant program will be launched within the next week or so as the countywide fund and grant management arrangements are defined. This fund is currently capitalized at \$1.5 million as sourced from a \$1 million contribution for Apple and \$500,000 from Google. This fund will also provide up to \$10,000 each to essential small businesses, with preference given to those retaining employees and to support sick leave payment obligation and operating costs. The fund administrator will be the San Jose-

based Opportunity Fund, the largest U.S. Treasury certified Community Development Finance Institution in the county.

Lastly, staff will continue to promote the technical assistance services BusinessOwnerSpace.com (BOS) partners such as the Small Business Development Center, AnewAmerica, SCORE, and the Minority Business Development Agency. These agencies provide no cost business advisory services related to assistance in packaging SBA loans, as well as on a wide array of matters related to business restructuring matters. Other partner services include pro bono legal, marketing and tax advice. Many of these agencies have multi-lingual staff. Staff will promote these services in various languages through Flash Reports, the emergency email targeting the Business Tax Database, the 32 partners in the BOS network, SVO and the ethnic chambers, business districts and the like.

### **CONCLUSION**

It is recommended that the City adopt an ordinance requiring employers that are lawfully permitted to continue operations under the County and State stay-home mandates provide sick leave to persons not covered by recent federal legislation and that is effective during the COVID-19 health crisis without any exemption for small employers.

### **EVALUATION AND FOLLOW-UP**

Based on Council direction, staff will return to Council on April 7, 2020, with a proposed sick leave ordinance.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the April 1, 2020, City Council Special Agenda.

### **COORDINATION**

This memorandum was coordinated with the City Manager's Office, City Attorney Office, Office of Economic Development, Department of Public Works, Office of Employee Relations, and Human Resources.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a Project, File No. PP17 004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in potentially significant physical impact on the environment.

  
David Sykes  
City Manager

For questions, please contact Kim Walesh, Deputy City Manager, at (408) 535-8177.