

ORDINANCE NO. _____

**AN UNCODIFIED ORDINANCE OF THE CITY OF SAN
JOSÉ ENACTING TEMPORARY SICK-LEAVE
REQUIREMENTS FOR CERTAIN PRIVATE EMPLOYERS
FOR THE DURATION OF THE CURRENT COVID-19
HEALTH EMERGENCY**

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19 (also known as the “Coronavirus Disease”), and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020;

WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California based on the threats to public health caused by COVID-19;

WHEREAS, on March 6, 2020, the City of San José issued a Proclamation of Local Emergency finding that the existence and threat of COVID-19 in the community gives rise to conditions of extreme peril to the safety and health of persons within the City;

WHEREAS, on March 16, 2020, the Santa Clara County Public Health Officer issued a COVID-19 related order doing the following:

- Requiring residents to shelter in place and businesses to close, and
- Establishing exceptions, including allowing individuals to leave their homes to engage in “essential activities,” “essential government functions” and “essential businesses,” as those terms are defined in the order;

WHEREAS, on March 19, 2020, the Governor of the State of California issued an Order (Executive Order N-33-20) that all individuals living in California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all;

WHEREAS, effective April 1, 2020, the Emergency Paid Sick Leave Act (enacted as part of the Families First Corona Virus Response Act) mandates that certain employers provide their employees with paid sick leave to be used for any of the following COVID-19 related reasons:

- The employee is subject to quarantine or isolation by federal, state or local order, or is caring for someone who is quarantined or isolated,
- The employee is advised by a health-care provider to self-quarantine or is caring for someone who is so advised by a health-care provider,
- The employee experiences symptoms and is seeking medical diagnosis, or
- The employee is caring for a minor child because of a closed school or daycare;

WHEREAS, the federal Emergency Paid Sick Leave Act mandates 80 hours of sick leave for full-time employees and the average number of hours an employee works over a two (2) - week period as the sick leave hours for part-time employees;

WHEREAS, the federal Emergency Paid Sick Leave Act requires sick leave to be available immediately regardless of the length of employment;

WHEREAS, the federal Emergency Paid Sick Leave Act contains tax credits to help employers pay for the sick leave provided to employees;

WHEREAS, the sick leave requirements of the federal Emergency Paid Sick Leave Act contain the following limitations:

- The Act does not apply to employers with more than 500 employees,
- The Act authorizes the Department of Labor to exempt businesses with less than 50 employees if providing the benefit would jeopardize the viability of the business as a going concern, and
- The Act authorizes an employer to elect not to provide the benefit to employees who are health care providers or emergency first responders;

WHEREAS, the Emergency Paid Sick Leave Act expires on December 31, 2020;

WHEREAS, given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, the City Council is compelled to enact this Ordinance, which sets forth paid sick-leave requirements for employees not covered by the federal Emergency Paid Sick Leave Act; and

WHEREAS, Section 606 of the City Charter does not require codification of this Ordinance because the Ordinance is temporary and, therefore, not a general ordinance in force.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title

This Ordinance will be known as the "COVID-19 Paid Sick Leave Ordinance."

SECTION 2. Authority

This Ordinance is adopted based on the same powers pursuant to which the City adopted its Minimum Wage Ordinance in Chapter 4.100 of the San José Municipal Code, including Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law. The enactment of this Ordinance is intended to be an exercise of the City's general police powers to protect the health, safety, and welfare as those powers are set forth in State and Federal law.

SECTION 3. Intentionally Omitted

SECTION 4. Effective Date

This urgency Ordinance is effective on the date of its adoption.

SECTION 5. Sunset Date

This Ordinance sunsets on December 31, 2020.

SECTION 6. Definitions

For purposes of this Ordinance, the following words, whether used in the singular or plural, have the following meanings.

- A. "Employee" means a person employed by an Employer (as defined below) and who has worked at least two (2) hours within the geographic boundaries of the City of San José for such Employer, provided as follows:
 - 1. The determination of an employee in the construction industry will be made in accordance with Section 245.5(a)(2) of the California Labor Code, and

2. The determination of employee status will be made in accordance with Section 2750.3 of the California Labor Code.
- B. "Employer" means a person or entity that is an "employer" as defined in the City's Minimum Wage Ordinance, located in Subsection C of Section 4.100.030 of San José Municipal Code.
- C. "Essential Work" means work activities and services – as defined in the order issued by the Santa Clara County Public Health Officer on March 16, 2020 - for which an Employee may leave his/her residence to perform.
- D. "Office" means the City's Office of Equality Assurance or such other City department or office as the Council may designate by resolution to enforce the Minimum Wage Ordinance.

SECTION 7. Covered Employers

- A. This Ordinance applies to Employers that are not required – in whole or in part - to provide paid sick leave benefits under the federal Emergency Paid Sick Leave Act.
- B. If an Employer is not required to provide a portion of the sick leave benefits otherwise required by the federal Emergency Paid Sick Leave Act, the intent of this Ordinance is that it apply to such Employer only to the extent of the benefit not provided under the Act.

SECTION 8. Sick Leave Requirement

Employers subject to this Ordinance under Section 7 must provide the paid sick-leave benefit described in this Ordinance to each Employee who leaves his/her residence to perform Essential Work. This benefit is effective immediately on the effective date of this Ordinance.

SECTION 9. Sick Leave Hours

- A. A fulltime Employee is entitled to eighty (80) hours of paid sick leave. These hours are available on the effective date of the sick leave benefit.
- B. A part-time Employee is entitled to sick leave hours equal to the number of hours he/she works on average over a two (2) - week period. These hours are available on the effective date of the sick leave benefit.

SECTION 10. Scope of Benefit

Paid sick leave hours are subject to the requirements set forth in this Section 10.

- A. An Employee can use paid sick leave for any of the following purposes:
1. The Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19,
 2. The Employee is advised by a health-care provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a health-care provider,
 3. The Employee experiences symptoms of COVID-19 and is seeking medical diagnosis, or
 4. The Employee is caring for a minor child because a school or daycare is closed due to COVID-19.
- B. The Employer will pay the Employee for properly used sick leave at the Employee's regular rate of pay up to \$511 a day not to exceed an aggregate of \$5,110. Notwithstanding the foregoing, the Employer may pay an Employee using sick time to care for another person at two-thirds of the Employee's regular rate of pay up to \$200 a day not to exceed an aggregate of \$2,000.
- C. For a part-time Employee, the Employer will calculate the amount of paid sick leave used based on the average number of hours the Employee worked per day during the six (6) months immediately preceding the effective date of this Ordinance. If an Employee has worked for the Employer less than six (6) months, then the Employer will calculate the amount of sick leave used based on the average hours the Employer expected at time of hire to have the Employee work.
- D. An Employer cannot require an Employee to find a replacement as a condition of using sick leave.
- E. An Employee is not entitled to carryover sick leave between years and is not entitled, under any circumstances, to be paid for unused sick leave. Unused sick leave will not be available after the sunset of this Ordinance and ceases to exist.

SECTION 11. Exemptions

- A. Nothing in this Ordinance is intended to require the provision of sick leave to Employees who can work from home.
- B. This Ordinance does not apply to any Employer that provides its Employees, on the effective date of this Ordinance, with some combination of paid personal leave at least equivalent to the paid sick time required by this Ordinance. An Employer that provides some combination of paid personal leave less than the paid sick time required by this Ordinance is required to comply with this Ordinance to the extent of such deficiency.
- C. Notwithstanding Subsection B of this Section 11, this Ordinance does not apply to any Employer that operates a hospital if such Employer provides its Employees, within two (2) weeks of the effective date of this Ordinance, with some combination of paid personal leave at least equivalent to the paid sick time required by this Ordinance. If such Employer provides some combination of paid personal leave less than the paid sick time required by this Ordinance, the Employer must comply with this Ordinance to the extent of such deficiency.

SECTION 12. Enforcement

- A. The Office is authorized to establish reasonable requirements related to informing Employees of their rights under this Ordinance, including requiring Employers to post notices.
- B. The Office is authorized to implement and enforce this Ordinance in the same manner as, and consistent with, the authority granted to it to enforce the Minimum Wage Ordinance in Chapter 4.100 of the San José Municipal Code.

PASSED FOR PUBLICATION OF TITLE this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk