

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE ADOPTING A REVISED COVID-19 PAID SICK LEAVE ORDINANCE CONTINUING, RETROACTIVE FROM JANUARY 1, 2021 THROUGH JUNE 30, 2021, THE PAID SICK LEAVE BENEFITS THAT HAD BEEN PROVIDED UNDER THE EXPIRED FEDERAL EMERGENCY PAID SICK LEAVE ACT AND THE PREVIOUS CITY COVID-19 PAID SICK LEAVE ORDINANCE, ADDING ENFORCEMENT BY MEANS OF A PRIVATE RIGHT OF ACTION, AND MAKING OTHER TECHNICAL CHANGES TO REFLECT THE HEALTH ORDERS OF THE STATE AND COUNTY OF SANTA CLARA

WHEREAS, on March 18, 2020, the federal government enacted the Families First Coronavirus Response Act, which included the Emergency Paid Sick Leave Act; and

WHEREAS, the federal Emergency Paid Sick Leave Act, which expired on December 31, 2020, required certain employers to provide certain employees with COVID-19 related paid sick leave benefits; and

WHEREAS, given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, on April 7, 2020 the City Council adopted uncodified urgency Ordinance No. 30390 and approved uncodified Ordinance No. 30391, both of which are known as the “COVID-19 Paid Sick Leave Ordinance”; and

WHEREAS, the COVID-19 Paid Sick Leave Ordinance mandates that employers who are *not* required under the federal Emergency Paid Sick Leave Act to provide COVID-19 related paid sick leave provide such benefits; and

WHEREAS, the COVID-19 Paid Sick Leave Ordinance expired on December 31, 2020; and

WHEREAS, the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread described in the COVID-19 Paid Sick Leave Ordinance – which description is incorporated herein - continue to exist today, as reflected by ongoing COVID-19 emergency proclamations and orders issued by California and local officials; and

WHEREAS, recent COVID-19 related health orders include the following: **(a)** “Order of the Health Officer of the County of Santa Clara Establishing revised Mandatory Risk Reduction Measures Applicable to all activities and Sectors to Address COVID-19,” issued October 5, 2020, **(b)** the State Health Officer’s “Regional Stay at Home Order,” issued December 3, 2020, and **(c)** the Health Officer of the County of Santa Clara order implementing the Regional Stay at Home Order, issued December 4, 2020; and

WHEREAS, the City Council desires to adopt this Revised COVID-19 Paid Sick Leave Ordinance to continue the paid sick leave benefits and requirements as set forth in the expired federal Emergency Sick Leave Act and the COVID-19 Paid Sick Leave Ordinance, add a private right of action to enforce those benefits and requirements, and make other technical changes to reflect the health orders of the State and County of Santa Clara; and

WHEREAS, other than the inclusion of a private right of action, the City Council intends by the adoption of the Revised COVID-19 Paid Sick Leave Ordinance to continue the paid sick leave benefits previously provided under the expired federal Emergency Sick Leave Act and COVID-19 Paid Sick Leave Ordinance, and does not intend to confer new benefits; and

WHEREAS, Section 606 of the City Charter does not require codification of this Revised COVID-19 Paid Sick Leave Ordinance because it 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 “Revised COVID-19 Paid Sick Leave Ordinance.”

SECTION 2. Authority

- A. 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.
- B. The City intends the enactment of this Ordinance 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. Omitted

SECTION 4. Effective Date

All benefits and requirements of this Ordinance are effective retroactive to January 1, 2021.

SECTION 5. Sunset Date

This Ordinance sunsets on June 30, 2021.

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. "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. General Requirement

An employer shall provide to each Employee of the Employer paid sick time to the extent the Employee is unable to work due to a need for leave because of any of the following reasons.

- A. The Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- B. The Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- C. The Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- D. The Employee is caring for an individual who is either: (1) to a subject federal, state, or local quarantine or isolation order related to COVID-19, or (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- E. 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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.

SECTION 8. Number of Sick Leave Hours

- A. A fulltime Employee is entitled to eighty (80) hours of paid sick leave.
- B. Except as provided in Subsection C of this Section 8, a part-time Employee is entitled to sick leave hours equal to the number of hours the Employee works on average over a two (2) week period.
- C. If a part-time Employee's schedule varies from week to week to such an extent that an Employer is unable to determine with certainty the number of hours the Employee would have worked if such Employee had not taken paid sick time permitted under Section 8, the Employer shall use whichever of the following applies:
 - 1. The number of hours equal to the average number of hours that the Employee was scheduled per day over the six (6) month period ending on the date on which the Employee takes the paid sick time, including hours for which the Employee took leave of any type; or

2. If the Employee has not worked for a six (6) month period, the reasonable expectation of the Employee at the time of hiring of the average number of hours per day that the Employee would normally be scheduled to work.
- D. The sick leave hours set forth in this Section 8 shall be available for immediate use by the Employee, retroactive to January 1, 2021, for the purposes set forth in this Ordinance regardless of how long the Employee has been employed by an Employer.
- E. Notwithstanding anything to the contrary in this Ordinance, the sick leave hours set forth in this Section 8 shall be the total number of hours available to the Employee for the period of April 2, 2020 (the effective date of the federal Emergency Sick Leave Act) through the expiration date of this Ordinance.
- F. An Employee is not entitled, under any circumstances, to be paid for unused sick leave hours provided under this Ordinance. Unused sick leave hours provided under this Ordinance will not be available after the sunset of this Ordinance and cease to exist.

SECTION 9. Compensation Rate

- A. Subject to Subsection B of this Section 9, the Employer shall compensate an Employee for sick leave hours used in accordance with this Ordinance at not less than the greater of the Employee's regular rate of pay or the applicable minimum wage rate.
- B. The Employer can limit the amount it pays the Employee for sick leave hours used in accordance with this Ordinance to \$511 a day not to exceed an aggregate of \$5,110 for the period commencing April 2, 2020 through the expiration date of this Ordinance. Notwithstanding the foregoing, the Employer can limit the amount it pays the Employee for sick leave hours used to care for another person to two-thirds of the Employee's regular compensation rate up to \$200 a day not to exceed an aggregate of \$2,000 for the period commencing April 2, 2020 through the expiration date of this Ordinance.

SECTION 10. Employer's Termination of Paid Sick Time

Paid sick time provided to an Employee under this Ordinance shall cease beginning with the Employee's next scheduled work shift immediately following the termination of the need for paid sick time under Section 7 of this Ordinance.

SECTION 11. Sequencing

- A. An Employee may first use the paid sick time provided under this Ordinance for the purposes described in Section 7 of this Ordinance.
- B. An Employer may not require an Employee to use other paid leave provided by the Employer to the Employee before the Employee uses the paid sick time under this Ordinance.

SECTION 12. Prohibitions

- A. An Employer is prohibited from discharging, disciplining, or in any other manner discriminating against any Employee who takes leave in accordance with this Ordinance, who files any complaint or institutes or causes to be instituted any proceeding under or related to this Ordinance (including a proceeding that seeks enforcement of this Ordinance), or who testifies or is about to testify in any such proceeding.
- B. An Employer is prohibited from requiring, as a condition of providing paid sick time under this Ordinance, that the Employee involved search for or find a replacement Employee to cover the hours during which the Employee is using paid sick time.

SECTION 13. Exemptions

- A. Nothing in this Ordinance is intended to require the provision of sick leave to an Employee who can work from home.
- B. This Ordinance does not apply to any Employer that provides its Employees 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.

SECTION 14. Rules of Construction

Nothing in this Ordinance shall be construed:

- A. To in any way diminish the rights or benefits that an Employee is entitled to under any other Federal, State, or local law, collective bargaining agreement, or existing Employer policy; or

- B. To require financial or other reimbursement to an Employee from an Employer upon the Employee's termination, resignation, retirement, or other separation from employment for paid sick time under this Ordinance that has not been used by such Employee.

SECTION 15. 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.
- C. A person aggrieved by a violation of this Ordinance on or after January 1, 2021 shall have the same rights to bring a civil action and the same remedies as are set forth in the Minimum Wage Ordinance in Section 4.100.090 of the San José Municipal Code, entitled "Enforcement."

NF:GDS:KML
12/22/2020

PASSED FOR PUBLICATION OF TITLE this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk