

ANALYSIS

This interim urgency ordinance constitutes the Los Angeles County COVID-19 Worker Protection Ordinance by adding Chapter 8.200 to Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code, which establishes supplemental paid sick leave for employees at businesses that employ 500 or more employees nationally in response to the pandemic COVID-19 public health crisis.

This interim urgency ordinance will take immediate effect upon its approval by at least a four-fifths vote of the Board of Supervisors.

This interim urgency ordinance will expire on December 31, 2020, unless the Board of Supervisors takes an action to extend this ordinance.

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ORDINANCE NO.

An interim urgency ordinance amending Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, relating to establishing supplemental paid leave for employees of employers with 500 or more employees nationally for COVID-19 related reasons.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Division 5 is hereby added to read as follows:

Division 5 COVID-19 Worker Protections.

Chapter 8.200 COVID-19 Supplemental Paid Sick Leave.

8.200.010 Purpose.

8.200.020 Definitions.

8.200.030 Supplemental Paid Sick Leave Entitlements.

8.200.040 Employee Request for Supplemental Paid Sick Leave.

8.200.050 Exemptions.

8.200.060 Employer Offset.

8.200.070 Enforcement.

8.200.080 Retaliatory Action Prohibited.

8.200.090 No Waiver of Rights.

8.200.100 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

8.200.110 Conflicts.

8.200.120 Severability.

8.200.130 Expiration of Ordinance.

**8.200.140 Exemption for Collective Bargaining Agreement,
Express Waiver.**

8.200.150 Authority.

8.200.010 Purpose.

As a result of the COVID-19 pandemic and "Safer at Home" emergency declarations by California Governor Gavin Newsom and the County of Los Angeles, issued to protect the public health and welfare, many workers in the County of Los Angeles are facing significant job and economic insecurity. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the County hereby requires all employers not covered by the Families First Coronavirus Response Act (H.R. 6201) and the California Governor's Executive Order N-51-20 in the County to provide its employees with supplemental paid sick leave for COVID-19 related reasons.

8.200.020 Definitions.

The following definitions shall apply to this Chapter:

- A. "County" means the unincorporated areas of the County of Los Angeles.
- B. "Emergency Responder" means an Employee who provides emergency response services, including, but not limited, to any of the following:

- 1. A peace officer;
- 2. A firefighter;
- 3. A paramedic;

4. An emergency medical technician;
5. A public safety dispatcher or safety telecommunicator;
6. An emergency response communication employee;
7. Rescue service personnel; and
8. Employees included in the definition of emergency responder in the regulations issued by the U.S. Department of Labor.

C. "Employee" means an individual who performs any work within the geographic boundaries of the County for an Employer. For purposes of this Chapter, a worker is presumed to be an Employee, and an Employer has the burden to demonstrate that a worker is a bona fide independent contractor and not an Employee. A food sector worker, as defined in the California Governor's Executive Order N-51-20, is excluded from the definition of "Employee."

D. "Employer" means a person, as defined in Section 18 of the California Labor Code, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. This Chapter applies only to Employers with 500 or more employees nationally. This Chapter and the definition of Employer does not apply to federal, state, or local government agencies.

E. "Family member" means the Employee's child, parent or spouse. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following: (a) under 18 years of

age or (b) an adult dependent child. "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the Employee when the Employee was a child.

F. "Health Care Provider" means an Employee who provides emergency response services, including, but not limited, to any of the following:

1. Medical Professionals;
2. Employees who are needed to keep hospitals and similar health care facilities well supplied and operational;
3. Employees who are involved in research, development, and production of equipment, drugs, vaccines, and other items needed to combat the COVID-19 public health emergency; and
4. Employees included in the definition of health care provider in the regulations issued by the U.S. Department of Labor.

G. "Person" means a person, association, organization, partnership, business trust, limited liability company or corporation.

H. "Supplemental Paid Sick Leave" means time an Employee is compensated by an Employer for COVID-19 related leaves as described in Section 8.200.040.

8.200.030 Supplemental Paid Sick Leave Entitlements.

A. An Employer's obligation to begin providing Supplemental Paid Sick Leave under this Chapter is March 31, 2020.

B. An Employee who is employed by an Employer on the effective date of this Chapter is entitled to Supplemental Paid Sick Leave as follows:

1. An Employee who works at least forty (40) hours per week or is classified as a full-time Employee by the Employer shall receive eighty (80) hours of Supplemental Paid Sick Leave. Supplemental Paid Sick Leave shall be calculated based on an Employee's highest average two week pay over the period of January 1, 2020 through the effective date of this Chapter.

2. An Employee who works less than forty (40) hours per week and is not classified as a full-time Employee by the Employer shall receive Supplemental Paid Sick Leave in an amount no greater than the Employee's average two week pay over the period of January 1, 2020 through the effective date of this Chapter.

C. In no event shall the Supplemental Paid Sick Leave amount paid to an Employee exceed \$511 per day and \$5,110 in the aggregate. Employees of joint Employers are only entitled to the total aggregate amount of leave specified for Employees of one Employer.

D. The total number of hours of Supplemental Paid Sick Leave to which an Employee is entitled pursuant to Section 8.200.030 shall be in addition to any paid sick leave that may be available to the Employee under Labor Code section 246.

E. An Employer may not require an Employee to use any other paid or unpaid leave, paid-time off, or vacation time provided by the Employer to the Employee before the Employee uses Supplemental Paid Sick Leave, or in lieu of Supplemental Paid Sick Leave.

8.200.040 Employee Request for Supplemental Paid Sick Leave.

A. An Employer shall provide Supplemental Paid Sick Leave upon the written (includes but is not limited to electronic mail and text), request of an Employee if the Employee cannot work, or telework, because:

1. A public health official or healthcare provider requires or recommends the Employee isolate or self-quarantine to prevent the spread of COVID-19;

2. The Employee is subject to a federal, State, or local quarantine or isolation order related to COVID-19 (e.g., is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system);

3. The Employee needs to care for a family member who is subject to a federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19; or

4. The Employee takes time off work because the Employee needs to provide care for a family member whose senior care provider or whose school or child care provider ceases operations in response to a public health or other public official's recommendation.

An Employer may require a doctor's note or other documentation for the use of Supplemental Paid Sick Leave.

8.200.050 Exemptions.

An Employer may exclude Employees who are Emergency Responders or Health Care Providers from the leave requirements of this Chapter.

8.200.060 Employer Offset.

If an Employer provided additional paid leave for COVID-19 related purposes ("Voluntary COVID-19 Leave"), above and beyond an Employee's regular or previously accrued leaves (e.g., sick or personal leaves), the obligation to provide Supplemental Paid Sick Leave under this Chapter shall be reduced for every hour an Employer allowed an Employee to take the Voluntary COVID-19 Leave in an amount equal to or greater than the requirements in Section 8.200.030 on or after March 31, 2020, for any of the reasons described in Section 200.040.

8.200.070 Enforcement.

A. An Employee claiming a violation of this Chapter may bring an action in Superior Court of the State of California against an Employer and may be awarded:

1. Reinstatement to the position the Employee was discharged in violation of this Chapter.
2. Back pay and Supplemental Paid Sick Leave unlawfully withheld, calculated at the Employee's average rate of pay.
3. Other legal or equitable relief the court may deem appropriate.

B. If an Employee is the prevailing party in any legal action taken pursuant to this Chapter, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

8.200.080 Retaliatory Action Prohibited.

No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this Chapter, for requesting to use or actually using Supplemental Paid Sick Leave under this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce his or her rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

8.200.090 No Waiver of Rights.

Any waiver by an Employee of any or all of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

8.200.100 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

With the exception of rights and remedies provided to employees pursuant to the federal Families First Coronavirus Response Act (HR 6201) and the California Governor's Executive Order N-51-20, the provisions of this Chapter are in addition to or independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee.

8.200.110 Conflicts.

Nothing in this Chapter shall be interpreted or applied to create any power or duty in conflict with any federal or State law.

8.200.120 Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

8.200.130 Expiration of Ordinance.

Due to the extraordinary effects on employment resulting from the COVID-19 pandemic, this ordinance shall be in effect until December 31, 2020, unless the Board of Supervisors takes an action to extend this ordinance.

8.200.140 Exemption for Collective Bargaining Agreement, Express Waiver.

All of the provisions of this Chapter, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted to constitute, a waiver of all or any of the provisions of this Chapter.

8.200.150 Authority.

This Chapter 8.200 is approved pursuant to sections 25123(d) and 25131 of the California Government Code, allowing for ordinances for the immediate preservation of the public peace, health, or safety.

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