

ANALYSIS

This urgency ordinance enhances the County's ability to fight the spread of COVID-19 and prevent retaliation for reporting or discussing public health violations by adding Chapter 11.01 (Preventing Retaliation for Reporting Public Health Violations) to Title 11 (Health and Safety) of the Los Angeles County Code, and it will take immediate effect upon approval by at least a four-fifths vote of the Board of Supervisors.

RODRIGO A. CASTRO-SILVA
Acting County Counsel

Cesar Del Peral

By: CÉSAR J. DEL PERAL
Senior Deputy County Counsel
Affirmative Litigation & Consumer
Protection Division

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ORDINANCE NO. _____

An urgency ordinance amending Title 11 (Health and Safety) of the Los Angeles County Code by adding Chapter 11.01 to prohibit retaliation for reporting public health violations.

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

SECTION 1. Chapter 11.01 is hereby added to read as follows:

11.01.010 Title.

The Ordinance codified in this Chapter shall be known as the "Preventing Retaliation for Reporting Public Health Violations Ordinance."

11.01.015 Urgency Findings.

This urgency ordinance is adopted pursuant to California Government Code section 25123(d). The Board of Supervisors ("Board") finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety based on the following facts:

1. COVID-19 is an infectious disease resulting from a novel coronavirus that has caused a widespread, ongoing, global outbreak of illness.
2. On March 4, 2020, the Chair of the Board proclaimed the existence of a local emergency (Proclamation of Local Emergency) based on conditions of disaster or of extreme peril to the safety of persons and property arising as a result of the introduction of COVID-19 in Los Angeles County. On March 4, 2020, the Board ratified the Proclamation of Local Emergency.

3. On March 4, 2020, the County of Los Angeles Health Officer ("Health Officer") declared a local health emergency (Declaration of Local Health Emergency) based on an imminent and proximate threat to public health from the introduction of COVID-19 in Los Angeles County. On March 4, 2020, the Board ratified the Declaration of Local Health Emergency.

4. On March 4, 2020, the Governor of the State of California proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19.

5. On March 13, 2020, the President of the United States proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency.

6. Since March 16, 2020, the Health Officer has issued and continues to issue a number of COVID-19-related Health Officer Orders to address the increasing and imminent threat to public health and safety as a result of COVID-19.

7. Violations of the County of Los Angeles health officer orders ("Health Officer Orders"), such as the COVID-19-related Health Officer Orders, present immediate threats to the public health and safety. Such violations increase the likelihood that COVID-19 will spread throughout the County and overwhelm our health care systems, cause preventable illnesses and deaths, and inflict economic and social harm on the County. The failure to comply with the provisions of the Health Officer Orders, such as prohibitions or restrictions on certain businesses and workplace activities to slow the rate of COVID-19 transmission, constitutes an imminent threat to public health and is a public nuisance.

8. Prohibiting retaliation against employees who report or discuss noncompliance with the COVID-19-related Health Officer Orders will both promote the reporting of such noncompliance and allow the County to more swiftly address the spread of COVID-19.

9. By encouraging workers to report public health violations without fear of retaliation, this ordinance promotes public health and increases the effectiveness of public health requirements.

11.01.020 Definitions.

Whenever used in this chapter, the following words and phrases shall be defined as set forth in this section.

A. "Worker" means any employee who performs any work within the geographic boundaries of the County of Los Angeles, excluding work performed in cities with their own Health Officer.

B. "Employer" means any 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 any Worker or exercises control over the wages, hours, duties, or working conditions of any Worker. This Chapter and the definition of "Employer" do not apply to federal, state, or local government entities.

C. "Health Officer Order" means any order or protocol issued by the Los Angeles County Health Officer.

D. "Public Health Council" means a group of Workers, not including supervisors or managers: (1) formed while the Board's Declaration of Local Health Emergency, ratified March 4, 2020, related to the COVID-19 pandemic remains in effect; and (2) whose purpose is to educate and inform other Workers for the same Employer regarding Health Officer Orders related to the COVID-19 pandemic.

11.01.030 Retaliation Against Workers Prohibited.

A. No Employer may discriminate in any manner or take adverse action, including but not limited to termination, constructive termination, demotion, pay reduction, or reduction in hours, against any Worker in retaliation for:

1. Reporting to the County of Los Angeles, its Department of Public Health, any other County departments or designees, non-County agencies or entities, the Worker's Employer, other Workers, or Public Health Councils about the Employer's or another Worker's perceived noncompliance with a Health Officer Order, this Chapter, or any other Chapter of Title 11 of this Code;

2. Discussing with the County of Los Angeles, its Department of Public Health, any other County departments or designees, non-County agencies or entities, the Worker's Employer, other Workers, or Public Health Councils the Employer's, or another Worker's, perceived noncompliance with a Health Officer Order, this Chapter, or any other Chapter of Title 11 of this Code;

3. Belonging to or forming a Public Health Council;

4. Informing any Worker of his or her rights under this Chapter or assisting such Worker in exercising such rights; or

5. Exercising any right provided under this Chapter.

B. The protections of this section shall apply to all communications as set forth above in subsections A.1 through and including A.5 that a Worker makes based on a good faith belief that the Worker's Employer is not in compliance with a Health Officer Order, this Chapter, or any other Chapter of Title 11 of this Code, even if such belief is mistaken.

C. Taking adverse action against a Worker within 90 days of the Worker's exercise of rights protected under this section shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

11.01.040 Investigation of Complaints.

A. Any complaints alleging a violation of this Chapter must be lodged with the Department of Public Health or any of its agents or designees.

B. The Department of Consumer and Business Affairs shall act as an agent for the Department of Public Health to investigate any complaint under this Chapter.

C. The Department of Consumer and Business Affairs may issue a finding that an Employer has violated this Chapter no later than one year after receiving the corresponding complaint.

11.01.050 Administrative Fine for Violation.

Any Employer who violates this Chapter may be subject to an administrative fine not to exceed \$10,000 per violation per day pursuant to Chapter 1.25 of this Code.

11.01.060 Adoption of Rules.

The Department of Consumer and Business Affairs may develop rules for the administration and implementation of this Chapter. A copy of such rules shall be filed with the Executive Officer of the Board and shall be in effect immediately thereafter.

11.01.070 Right of Action to Enforce Violations.

A. Any Worker aggrieved by an act made unlawful by this Chapter, or County Counsel on behalf of such Worker, may, within three years of an Employer's last act made unlawful by this Chapter, bring an action in the Superior Court of the State of California against that Employer for violations of this Chapter, and the aggrieved Worker may be awarded:

1. Where applicable, hiring or reinstatement to the position(s) sought or held before the alleged unlawful act, or front pay in lieu thereof.
2. All actual damages (including, but not limited to, lost pay and benefits and noneconomic damages) suffered by the Worker, or statutory damages in the sum of \$10,000 per violation, whichever is greater.
3. Punitive damages pursuant to California Civil Code section 3294.

B. The court shall award reasonable attorneys' fees and costs to the prevailing party, including to a Worker, to County Counsel, or to an Employer who

prevails in a lawsuit by a Worker and demonstrates that the Worker's lawsuit was frivolous.

11.01.080 Notice Before Initiating Suit.

A. Before a civil action is filed by a Worker or County Counsel under Section 11.01.070, the following requirements must be met:

1. The Worker or County Counsel must provide written notice to the Employer of the provisions of this Chapter alleged to have been violated and the facts to support the alleged violations; and
2. The Employer fails to cure the alleged violations of this Chapter within fifteen (15) business days of receiving such written notice.

11.01.090 Severability.

If any section, subsection, sentence, clause, or phrase of this urgency ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion(s) of this urgency ordinance. The Board hereby declares that it would have passed this urgency ordinance and every section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 2. Immediate Effect.

This urgency ordinance shall be and is hereby declared to be in full force and effect immediately upon its passage by a four-fifths (4/5) or greater vote.

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