

## ANALYSIS

This is an urgency ordinance to require private employers in the unincorporated areas of the County to provide paid leave for employees to receive COVID-19 vaccine injections. This urgency ordinance adds Chapter 8.205 (Employee Paid Leave for Expanded Vaccine Access) to Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code.

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

RODRIGO A. CASTRO-SILVA  
County Counsel

By

A handwritten signature in black ink, appearing to read "Joshua Goodman", written in a cursive style.

JOSHUA GOODMAN  
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Labor & Employment Division

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Requested: 4/20/21  
Revised: 5/04/21

**ORDINANCE NO. \_\_\_\_\_**

An ordinance adding Chapter 8.205 (Employee Paid Leave for Expanded Vaccine Access) to Division 5 – COVID-19 Worker Protections of Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, establishing paid leave for employees in the unincorporated areas of Los Angeles County to receive the COVID-19 vaccine.

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

**SECTION 1.** Chapter 8.205 is hereby added to read as follows:

**Chapter 8.205 Employee Paid Leave for Expanded Vaccine Access.**

**8.205.010 Findings and Purpose.**

**8.205.020 Definitions.**

**8.205.030 COVID-19 Vaccine Paid Leave.**

**8.205.040 Employer Notification Requirements.**

**8.205.050 Employer Record Keeping and Access Requirements**

**8.205.060 Retaliatory Action Prohibited.**

**8.205.070 Employee Remedies.**

**8.205.080 Administrative Enforcement.**

**8.205.090 No Waiver of Rights.**

**8.205.100 Conflicts.**

**8.205.110 Severability**

**8.205.120 Operative Period.**

**8.205.130 Exemption for Collective Bargaining Agreement.**

### **8.205.010 Findings and Purpose.**

It is critical that barriers to COVID-19 vaccine access are removed to ensure an effective and equitable ability for residents to obtain the vaccine. Although the vaccine is free regardless of insurance or immigration status, many employees lack the financial means to take the necessary time off from work to access the vaccine. This is especially true for low wage and essential workers.

Health experts have estimated that at least 70 to 85 percent of the population will need to be fully vaccinated to reach herd immunity. As of April 4, 2021, approximately 40 percent of County residents have received one dose of the vaccine. However, Black and Latinx residents have a lower vaccination rate when compared to other demographic groups – and this equity gap is even more pronounced for Black and Latinx men. In California, most essential workers are Black and Latinx. In fact, of Latinx workers in the State, 55 percent are employed as essential workers, and 48 percent of Black workers are in essential roles. Men are overrepresented in frontline jobs including food preparation, farm workers, and construction workers. Though the State does not currently collect vaccination data by occupation, the low vaccination rate in Black and Latinx communities for those ages 16 and above strongly suggests that more must be done to reach essential workers.

To close these gaps, the County deploys mobile units to go directly to select workplaces to provide vaccines. These mobile units target multiple communities, including highly impacted areas, neighborhoods with low access to transportation, homebound individuals, and senior housing centers. However, their capacity is limited,

and mobile units alone cannot meet the significant need for every workplace across the County. It is clear that more must be done to remove barriers to access for workers across the County, especially our essential workers.

Workers must have a greater ability to access vaccination sites. Furthermore, workers must not be forced to decide between a paycheck and taking the necessary steps to safeguard their own wellbeing and the public health. To that end, the County has an interest in ensuring that all workers have access to additional paid leave benefits to obtain the COVID-19 vaccine.

The federal Families First Coronavirus Relief Act (FFCRA) included provisions requiring employers to provide 80 hours of paid sick leave for coronavirus-related purposes such as recovery, quarantine, and isolation. However, it included carve outs for businesses with fewer than 25 employees or greater than 500 employees. Furthermore, it exempted employees from the public sector, regardless of the size of the entity. Reports have indicated that because of this carve-out, roughly 50 percent of employees were exempt from this critical provision.

California Senate Bill 95 (codified in Labor Code section 248.2) provided 80 hours of COVID-19 related sick time beyond the expiration of the FFCRA. Although Labor Code section 248.2 provides paid time off for workers to receive the COVID-19 vaccine, the County's most vulnerable residents, especially our essential workers, may have already exhausted the existing 80-hour benefit, and lack the necessary hours to take time off work to get vaccinated. To that end, the County has an interest in ensuring that these workers are provided additional paid leave to receive their vaccine.

It is in the best interest of the County's public health and the County's economy that we ensure that all workers are vaccinated as expeditiously as possible to prevent further outbreaks or delays for the County's re-opening. As the County reopens, ensuring workers are vaccinated will provide greater assurance that businesses are safe for customers to return to, and restore greater consumer confidence in returning to regular economic activity.

**8.205.020                      Definitions.**

The following definitions apply to this Chapter:

- A. "County" means the unincorporated areas of the County of Los Angeles.
- B. "COVID-19 Vaccine Leave" means time an Employee is compensated by an Employer for receiving each COVID-19 vaccine injection, as described in Section 8.205.030. This paid leave includes time spent for an Employee to travel to and from a COVID-19 vaccine appointment, to receive the COVID-19 vaccine injection, and to recover from any symptoms related to receiving the COVID-19 vaccine that prevent the Employee from being able to work or telework.
- C. "DCBA" means the Los Angeles County Department of Consumer and Business Affairs.
- D. "Employee" means an individual who performs any work in 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.

E. "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 and the definition of Employer does not apply to federal, state, or local government agencies.

F. "Full Time Employee" means:

1. An Employee who the Employer considers to work full time; or
2. An Employee who worked or was scheduled to work, on average,

at least 40 hours per week for the Employer in the two weeks preceding the date the Employee took COVID-19 Vaccine Leave.

G. "Part-Time Employee" means an Employee who is not a Full-Time Employee.

**8.205.030 COVID-19 Vaccine Paid Leave.**

A. A Full-Time Employee who has exhausted all available leave time under Labor Code section 248.2 is entitled to use up to four hours of additional paid leave per injection to receive the COVID-19 vaccine.

B. A Part-Time Employee who has exhausted all available leave time under Labor Code section 248.2 is entitled to additional paid leave to receive the COVID-19 vaccine at the following rate: the prorated amount of four hours per injection based on their normally scheduled work hours over the two-week period preceding the injection. As an example, if an employee worked 20 hours per week during the two-week period,

the Employee would be entitled to two hours of COVID-19 Vaccine Paid Leave per injection.

C. An Employee who receives COVID-19 Vaccine Paid Leave shall be compensated at their normal rate of pay. COVID-19 Vaccine Paid Leave shall be calculated based on an Employee's highest average two-week pay over the period of January 1, 2021 through the effective date of this Chapter.

D. The total number of hours of COVID-19 Vaccine Paid Leave to which an Employee is entitled under this Section shall be in addition to any paid sick leave that may be available to the Employee under Labor Code section 246, et seq.

E. An Employer may ask an Employee to provide written verification of receipt of the COVID-19 vaccine in order to receive COVID-19 Vaccine Leave.

**8.205.040 Employer Notification Requirements.**

A. COVID-19 Vaccine Leave Posting. Every Employer must post in a conspicuous place where Employees work a written notice prepared and made available electronically by the DCBA informing Employees of the COVID-19 Vaccine Leave Ordinance and of their rights under this Chapter.

B. Supplemental Disclosure Allowed. Nothing in this Section requires Employers to duplicate disclosures required by State law, including sections 226 and 2810.5 of the California Labor Code. Disclosures required by this Section may be satisfied by supplementing any State-mandated disclosure.

**8.205.050 Employer Record Keeping and Access Requirements.**

A. Payroll Records. Employers must keep records necessary to demonstrate compliance with this Chapter, including accurate and complete payroll records pertaining to each Employee that document the name, address, occupation, dates of employment, rate or rates of pay, and the amount paid.

B. Retention Period. Every Employer must retain payroll records required in subsection A pertaining to each Employee for a period of four years.

C. Records and Interview Access; Cooperation with Investigations. To monitor and investigate compliance with the requirements of this Chapter, every Employer shall: (a) allow the DCBA access to such records required in subsection A, (b) allow the DCBA to interview persons, including Employees, during normal business hours, and (c) cooperate with the DCBA investigators.

D. Presumption of Violation. There shall be a rebuttable presumption that an Employer violated this Chapter if an allegation is made concerning an Employee's entitlement to COVID-19 Vaccine Leave under this Chapter and an Employer does not comply with the requirements of this Section to maintain or retain payroll records, or does not allow the DCBA reasonable access to such records.

E. Records Access Charges. When an Employer demonstrates to the DCBA that the Employer will incur a fee or charge for providing the records required in this Section, the Employer will be required to provide the DCBA with only the prior two years of records, unless the DCBA determines that obtaining four years of records is reasonable and necessary for the enforcement of this Chapter.

**8.205.060                      Retaliatory Action Prohibited.**

No Employer can refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce their rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this Chapter. Rights protected under this Chapter include: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of potential rights under this Chapter and to assist in asserting such rights. Protections of this Chapter apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

**8.205.070                      Employee Remedies.**

A.     Private Right of Action. An Employee claiming a violation of this Chapter may file an action in the Superior Court of the State of California against an Employer, within three years of the occurrence of the alleged violation, and may be awarded:

1.     Reinstatement to the position from which the Employee was discharged in violation of this Chapter.
2.     Back pay unlawfully withheld.
3.     All penalties and/or fines imposed pursuant to other provisions of this Chapter or State law, as determined by the court.
4.     For retaliatory action by an Employer, the Employee shall be entitled to a trebling of lost wages and penalties and/or fines imposed, in addition to reinstatement, as determined by the court.

5. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

6. Other legal or equitable relief the court may deem appropriate.

7. 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.

B. Administrative Complaint. Any Employee, or any other person, may file a complaint with the DCBA alleging a potential violation of this Chapter. A complaint should include a statement of the dates, places, and persons or entities responsible for such violation. Complaints must be filed within three years after the occurrence of the alleged violation of this Chapter.

**8.205.080 Administrative Enforcement.**

A. Wage Enforcement Authority. The Department of Consumer and Business Affairs is authorized to investigate complaints of alleged violation of this Chapter and to enforce the requirements of this Chapter in the same manner, and subject to the same procedures and appeals, as set forth in Chapter 8.101, the Los Angeles County Wage Enforcement Ordinance. That includes all enforcement powers and duties, investigative authority, access privileges to Employer records, confidentiality, settlement authority, referral of violations to appropriate law enforcement

agencies, and authority to issue notices of violation, correction orders, and wage enforcement orders.

B. Payments on Employees' Behalf. The County, when enforcing on behalf of an Employee, has the authority to require that payment of all amounts due under this Chapter be paid directly to the County. The failure of an Employer to pay any amounts due under this Chapter shall constitute a debt under this Section to the County. The County, as plaintiff and/or judgment creditor, may file a civil action on behalf of an Employee and/or the County or, to the extent feasible under State law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay wages, penalties and administrative fines assessed by the DCBA, or pursue other legal and equitable remedies available to the County. The County shall be awarded reasonable attorneys' fees and costs as well as costs associated with enforcing a violation under this Chapter.

C. Nothing in this Chapter shall limit or otherwise prohibit any governmental agency with jurisdiction over wage-related claims from enforcing, or pursuing remedies on behalf of affected Employees permitted by, the provisions of this Chapter.

**8.205.090                      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.

**8.205.100                      Conflicts.**

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

**8.205.110 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.

**8.205.120 Operative Period.**

This ordinance shall be in effect until August 31, 2021. The provisions of this Chapter are made retroactive to January 1, 2021.

**8.205.130 Exemption for Collective Bargaining Agreement.**

All of the provisions, or any part, of this Chapter, 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.

**SECTION 2. Immediate Effect.**

This ordinance shall be and is hereby declared to be in full force and effect immediately upon its passage by a four-fifths or greater vote, pursuant to sections 25123(d) and 25131 of the California Government Code. The Board of Supervisors

finds that the establishment of the benefits provided for herein are necessary for the immediate preservation of the public peace, health, or safety given the extraordinary effects on employment resulting from the ongoing COVID-19 pandemic.

[CH8205JGCC]