

# EMPLOYMENT LAW UPDATE

*Relationship-Driven Results*

*April 3, 2020*

## **Los Angeles Mandates Expanded Paid Sick Leave for Large Employers**

The City of Los Angeles has adopted its own expanded paid sick leave benefits—referred to as “Supplemental Paid Sick Leave”—for eligible employees affected by the COVID-19 pandemic. The purpose of the Ordinance is to extend sick leave benefits to employees of larger employers that are not covered by the Families First Coronavirus Response Act (“FFCRA”). The City Council passed the Ordinance on March 27, 2020; Mayor Eric Garcetti has until April 7, 2020 to sign the Ordinance and is expected to do so. The Ordinance will become effective immediately upon publication following the mayor’s signature and will remain in effect until December 31, 2020.

### ***Covered Employers***

Employers with 500 or more employees nationally are covered by the Ordinance.

### ***Eligible Employees***

Only employees who perform work for covered employers within the geographic boundaries of the City of Los Angeles are eligible for Supplemental Paid Sick Leave. Moreover, an employee must have been employed with the same covered employer during the period of February 3, 2020 through March 4, 2020 to be eligible for Supplemental Paid Sick Leave.

However, employees who are first responders or health care providers are exempt from the requirements of this Ordinance. “First responder” is defined as an employee of a state or local public agency who provides emergency response services, including:

- A peace officer;
- A firefighter;
- A paramedic;
- An emergency medical technician;
- A public safety dispatcher or safety telecommunicator;

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- An emergency response communication employee; and
- Rescue service personnel.

The Ordinance adopts the definition of “health care provider” set forth in Government Code section 12945.2 (the Fair Employment & Housing Act). Thus, a “health care provider” means:

- An individual holding either a physician’s and surgeon’s certificate, an osteopathic physician’s and surgeon’s certificate, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition; or
- Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the Family & Medical Leave Act.

### ***Supplemental Paid Sick Leave Entitlement***

Eligible employees are entitled to Supplemental Paid Sick Leave as follows:

- Employees who work at least 40 hours per week or are otherwise classified by the employer as full-time must receive 80 hours of Supplemental Paid Sick Leave. Supplemental Paid Sick Leave is calculated based upon the employee’s average two week pay over the period of February 3, 2020 through March 4, 2020.
- Employees who work fewer than 40 hours per week and are not classified by the employer as full-time must receive Supplemental Paid Sick Leave in an amount no greater than the employee’s average two week pay over the period of February 3, 2020 through March 4, 2020.
- The Supplemental Paid Sick Leave amount paid to an employee is capped at \$511 per day and \$5,110 in the aggregate.

The Ordinance confirms that these benefits and rights are in addition to any other rights available to the employee under state or local law (i.e., California paid sick leave or Los Angeles paid sick leave). However, these benefits run concurrently with any paid sick leave under the FFCRA, should an employer or employee be covered under both the federal statute and this Ordinance.

### ***Qualifying Reasons for Supplemental Paid Sick Leave***

An eligible employee may take Supplemental Paid Sick Leave upon oral or written request if the employee needs time off work because:

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

## **Areas of Practice**

Appellate

Business Litigation

Civil & Trial Litigation

Community Association Litigation

Employment & Labor

Personal Injury

Product Liability

Professional Liability

Real Estate Litigation

Restaurant & Hospitality

Retail

Transactional & Business Services

Transportation

- The employee 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;
- The employee needs to care for a family member who is not sick but who public health officials or healthcare providers have required or recommended isolation or self-quarantine; or
- The employee needs to provide care for a family member whose senior care provider or whose school or child care provider caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public official's recommendation.

Notably, an employer may not require a doctor's note or other documentation for the use of Supplemental Paid Sick Leave.

### ***Offsets***

If an employer has already provided paid leave since March 4, 2020 for COVID-19 related reasons, then any hour of such leave already provided is offset against the 80-hour requirement. That is, if an employer permitted an employee to take 40 hours of paid sick leave from March 9 through March 13, 2020 to self-isolate, then the employer need only provide an additional 40 hours of Supplemental Paid Sick Leave under the Ordinance.

### ***Retaliation Prohibited***

An employer may not discharge, reduce the compensation of, or otherwise discriminate against an employee for opposing any practice proscribed by the Ordinance, for requesting or using Supplemental Paid Sick Leave, for participating in proceedings related to the Ordinance, or for seeking to enforce or assert his or her rights under the Ordinance.

### ***Enforcement***

An employee establishing a violation of the Ordinance may obtain reinstatement to his or her previous position, back pay and Supplemental Paid Sick Leave unlawfully withheld, reasonable attorneys' fees and costs, and other legal or equitable relief a court may deem appropriate.

### ***Exemption for Collective Bargaining Agreement***

All of the provisions of the Ordinance (or any part thereof) may be waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in clear and unambiguous terms.

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