



ERIC GARCETTI  
MAYOR

## **Public Order Under City of Los Angeles Emergency Authority**

**Issue Date: April 7, 2020 (Revised February 10, 2021)**

**Subject: Supplemental Paid Sick Leave Due to COVID-19**

On March 27, 2020, the City Council passed an Ordinance (Council File: 20-0147-S39) adding Article 5-72HH to Chapter XX of the Los Angeles Municipal Code, to provide supplemental paid sick leave to workers affected by COVID-19. I applaud the City Council for thinking boldly and acting quickly to pass supplemental paid sick leave, enabling more Angelenos to be safer at home to stop the spread of this disease and care for affected family members.

In the midst of this public health crisis and economic upheaval, we must also anticipate that workers could suffer through layoffs if this City imposes excessive burdens and costs upon businesses — many of which have ceased operations, lost customers, and sustained catastrophic losses due to this pandemic. We must also ensure that City regulations do not unintentionally cause staffing shortages at hospitals and critical health facilities that are on the frontlines of our fight against this pandemic. In my judgment, the modifications put into place by this emergency Order strike a necessary balance of these interests, and I hope the City Council will consider amending its ordinance with these provisions in the near future.

Until then, this Emergency Order will promote public health, protect jobs and preserve economic stability.

Therefore, by virtue of the authority vested in me as Mayor of the City of Los Angeles under the provisions of the Los Angeles Administrative Code, Chapter 3, Section 8.29 to promulgate, issue, and enforce emergency rules, regulations, orders, and directives, I hereby declare the following to be necessary for the protection of life and property and order, effective immediately, during the emergency period, that Article 5-72HH of Chapter XX of the Los Angeles Municipal Code be suspended during this local emergency period and replaced and superseded with the following provisions:

### **I. COVID-19 SUPPLEMENTAL PAID SICK LEAVE.**

- A. An Employee who has been employed with the same Employer for 60 days with the same Employer, is entitled to supplemental paid sick leave, if an Employee is unable to work or telework, as follows:

1. An Employee who works at least 40 hours per week or is classified as a full-time Employee by the Employer shall receive 80 hours of supplemental paid sick leave. Supplemental paid sick leave shall be calculated based on an Employee's average two week pay over the last 60 days of employment.
  2. An Employee who works less than 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 last 60 days of employment.
- B. For purposes of this Order, an Employee is an individual who performs any work within the geographic boundaries of the City for an Employer. For purposes of this Order, an Employer is a person in Section 18 of the California Labor Code, including a corporate officer or executive, who directly 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 Order shall apply to an Employer that has either: (i) 500 or more employees within the City of Los Angeles; or (ii) 2,000 or more employees within the United States.
- 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.

## **II. EMPLOYEE REQUEST FOR SUPPLEMENTAL PAID SICK LEAVE.**

- A. An Employer shall provide supplemental paid sick leave upon the oral or written request of an Employee if:
1. The Employee takes time off due to COVID-19 infection or because 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 takes time off work because 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;
  3. The Employee takes time off work because 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
  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 caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public officials recommendation. This provision is only applicable to an Employee who is unable to secure a reasonable alternative caregiver.
- B. An Employer may not require a doctor's note or other documentation for the use of Supplemental Paid Sick Leave.

### III. EMPLOYER OFFSET.

An Employer's obligation to provide 80 hours of Supplemental Paid Sick Leave under this Order shall be reduced for every hour an Employer allowed an Employee to take paid leave in an amount equal to or greater than the requirements in Section II, not including previously accrued hours, on or after March 4, 2020, for any of the reasons described in Paragraph II.A.1-4 or in response to an Employee's inability to work due to COVID-19.

### IV. EXEMPTIONS.

- A. Emergency and Health Services Personnel. An Employer of an Employee who is either Emergency Personnel or a health care worker shall be exempt from this Order. Emergency Personnel refers to individual specified in the April 1, 2020 City of Los Angeles Safer at Home emergency order Paragraph 5(vi), including all first responders, gang and crisis intervention workers, public health workers, emergency management personnel, emergency dispatchers, law enforcement personnel, and related contractors and others working for emergency services providers. A health care worker shall encompass individuals described in California Government Code Section 12945.2(c)(6) or individuals, including contract workers, working at a health facility licensed under California Health & Safety Code Section 1250.
- B. Critical Parcel Delivery. An Employer of an Employee that provides global parcel delivery services shall be exempt from this Order. For purposes of this Order, global parcel delivery is an essential Emergency Service vital to the health and safety during this pandemic.
- C. Generous Leave. If an Employer has a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually, the Employer is exempt from any obligation to provide supplemental leave pursuant to this Order for the Employee that received the more generous paid leave.
- D. New Business Exemption. This Order exempts new businesses that started in the City or businesses that relocated from outside the City on or after September 4, 2019 through March 4, 2020. To qualify, an Employer could not have been in business in the City in the 2018 tax year. The following businesses shall not qualify for this new business exemption: construction businesses as defined in Section 21.30 b.1 of the Los Angeles Municipal Code or film producers as defined in Section 21.109 of the Los Angeles Municipal Code.
- E. Government. This Order does not apply to employees of government agencies working within the course and scope of their public service employment.
- F. Closed Businesses and Organizations. Any business or organization that was closed or not operating for a period of 14 or more consecutive calendar days due to a city official's emergency order because of the COVID-19 pandemic shall be exempt from the requirements of this Order

### V. ENFORCEMENT.

- A. An Employee claiming a violation of this Order 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 Order.

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 Order, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

#### **VI. RETALIATORY ACTION PROHIBITED.**

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

#### **VII. NO WAIVER OF RIGHTS.**

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

#### **VIII. COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.**

With the exception of rights and remedies provided to employees pursuant to federal aid packages, including, without limitation, the Families First Coronavirus Response Act (HR 6201), the provisions of this Order 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.

#### **IX. CONFLICTS.**

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

#### **X. SEVERABILITY.**

If any subsection, sentence, clause or phrase of this Order 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 Order. The City Council hereby declares that it would have adopted this Order and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Order would be subsequently declared invalid or unconstitutional.

**XI. EXPIRATION OF ORDER.**

Due to the extraordinary effects on employment resulting from the COVID-19 pandemic, this order shall be in effect until two calendar weeks after the expiration of the COVID-19 local emergency period.

**XII. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.**

A collective bargaining agreement in place on the effective date of this Order may supersede the provisions of this Order if it contains COVID-19 related sick leave provisions. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this Order may only be expressly waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a collective bargaining agreement is in place on the effective date of this Order but the agreement does not address COVID-19 related sick leave provisions, the Employer must comply with this Order unless and until the agreement is amended to expressly waive in clear and unambiguous terms set forth in the agreement.

**XIII. OFFICE OF WAGE STANDARDS.**

The Office of Wage Standards (OWS) of the Bureau of Contract Administration shall promulgate Rule and Regulations consistent with this Order. The Rules and Regulations shall be posted on WagesLA.lacity.org and may be relied upon by Employees and Employers to determine their rights and responsibilities under this Order.

  
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Eric Garcetti, MAYOR

Dated: February 10, 2021 at Los Angeles, California  
Time: 3:00 p.m.

Filed with the City Clerk  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
By: \_\_\_\_\_