

## Large Employers in the City of Los Angeles Must Provide Supplemental Paid Sick Leave

The federal government recently enacted the Families First Coronavirus Response Act (“FFCRA”), which requires small businesses with less than 500 employees to provide a certain amount of paid sick leave and paid family and medical leave to employees affected by COVID-19. Effective April 7, 2020, employees of large companies in the City of Los Angeles are entitled to up to 80 hours of paid sick leave due to reasons related to COVID-19.

### **The City of Los Angeles Supplemental Paid Sick Leave Ordinance**

On April 7, 2020, Mayor Garcetti issued an emergency order (the “Order”) approving the Los Angeles City Council’s ordinance requiring employers to provide supplemental paid sick leave if they have 500 or more employees in the City of Los Angeles or 2,000 or more employees in the United States. The employees entitled to supplemental paid sick leave must be unable to work or telework and must have been employed with their employer from February 3, 2020 to March 4, 2020. The Order provides that:

- Full-time employees (at least 40 hours per week) are entitled to 80 hours, calculated based on their average two week pay over the period of February 3, 2020 to March 4, 2020;
- Part-time employees (less than 40 per week) are entitled to an amount no greater than their average two week pay over the period of February 3, 2020 to March 4, 2020.

The Order will be in effect until two calendar weeks after the expiration of the COVID-19 local emergency period. The supplemental paid sick leave amount paid to each eligible employee is limited to \$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.

### **COVID-19 Reasons for Leave**

Upon oral or written request, an employer must provide supplemental paid sick leave to an employee for the following reasons:

- 1) The employee is suffering from a 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 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 (notably, this reason is not available in the FFCRA);
- 3) 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 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. (This provision is only applicable to an employee who is unable to secure a reasonable alternative caregiver.)

Employers may not require a doctor's note or other documentation for the use of the supplemental paid sick leave. An employer's obligation to provide 80 hours is reduced by each hour the employer allowed an employee to take paid leave in an amount equal to or greater than the required supplemental paid sick leave amounts (not including previously accrued hours) on or after March 4, 2020 for any of the above four COVID-19 related reasons or in response to an employee's inability to work due to COVID-19.

### **Exemptions**

Employers of the following employees are exempt from providing supplemental paid sick leave:

- A. Emergency and Health Services Personnel;
- B. Critical Parcel Delivery;
- C. Generous Leave;
  - a. If an employer has a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually for the employee.
- D. New Business Exemption;
  - a. 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.
  - b. To qualify, the employer could not have been in business in the City in the 2018 tax year.
  - c. Construction businesses and film producers are excluded from this exemption.
- E. Government;
- F. Closed Businesses and Organizations.
  - a. Any business or organization that was closed or not operating for a period of 14 or more days due to a city official's emergency order because of the COVID-19 pandemic or provided at least 14 days of leave.

### **Enforcement**

An employee claiming a violation of the order may be entitled to:

1. Reinstatement to the position the employee was discharged from in violation of the 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; and
4. Prevailing party reasonable attorneys' fees and costs.

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