

# Oakland Passes Emergency Paid Sick Leave Ordinance

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On May 12, 2020, the City of Oakland, California, unanimously passed an [emergency paid sick leave ordinance](#) requiring employers to provide up to 80 hours of additional paid sick leave for COVID-19 related issues.

The ordinance follows [similar measures enacted by other California cities and counties](#) to extend the emergency paid sick leave (EPSL) protections afforded by the [Families First Coronavirus Response Act](#) (FFCRA) to employers to which the FFCRA does not apply.

Oakland's ordinance is broader and more generous than the FFCRA's EPSL. First, while the FFCRA applies only to employers with fewer than 500 employees, Oakland's ordinance applies to all employers with 50 or more employees.

Second, the ordinance expands the reasons for which an employee may use Oakland's EPSL. Unlike the FFCRA, employees may use EPSL if they either are at least 65 years old or have health conditions that put them at a "heightened risk of serious injury or death if exposed to COVID-19."

Third, the ordinance allows an employee to receive his or her entire salary (up to \$511 per day or \$5,110 in the aggregate) for *any use* permitted under the ordinance. In contrast, under the FFCRA, an employee is entitled to only two-thirds of his or her salary when using supplemental leave to care for another individual who is either subject to a quarantine order or has been advised to self-quarantine by a healthcare professional.

Finally, the ordinance allows employers to "credit the total sick leave hours" provided to an employee under the FFCRA against the requirements for EPSL under the ordinance.

## Covered Employers

The ordinance applies to employers with 50 or more employees. Small employers with under 50 employees are exempt, except for "unregistered janitorial employers" and franchisees of franchisors or franchisor networks that "employ[] more than 500 employees in the aggregate," which are required to provide EPSL regardless of the number of employees they employ.

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To be eligible for leave, an employee must be entitled to minimum wage and work for “at least two hours after February 3, 2020, within the geographic boundaries” of Oakland, including the Port of Oakland.

## **Amount of Leave**

Full-time employees who worked 40 hours or more per week “over a period of February 3, 2020 through March 4, 2020” or whom the employer classified as full time from February 3, 2020, to present, are entitled to 80 hours of EPSL. Employees working fewer than 40 hours per week or whom the employer classifies as other than full-time are entitled to EPSL in an amount “equal to the average number of hours the employee worked” over 14 days from February 3, 2020, through March 4, 2020. The employer must use the highest number of hours worked during a 14-day period from February 3, 2020, through March 4, 2020.

Employers must pay EPSL at an employee’s regular rate of pay up to \$511 per day or \$5,110 in the aggregate. Employees are entitled only to the aggregate, even if they are employees of joint employers. They cannot recover additional leave by requesting EPSL from each joint employer.

## **Permissible Uses**

An employee can use Oakland EPSL for any of the following reasons:

- “the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19”;
- “the employee has been advised by a health care provider to self-quarantine due to COVID-19”;
- “the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis”;
- the employee is caring for an individual who either is subject to a quarantine order or has been advised to self-quarantine;
- the employee is caring for a son or daughter whose school or place of care has been closed or is unavailable due to COVID-19 precautions;
- “the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor and Secretary of Treasury”;
- the employee is caring for “a family member who has been diagnosed with COVID-19 or is experiencing symptoms”;
- the employee requires time off work because the employee “is at least 65 years old”;
- the employee requires time off work because the employee has “heart disease, asthma, lung disease, diabetes, kidney, disease, or weakened immune system,” or any other “condition identified by Alameda County, California or federal public health official as putting the public at heightened risk of serious illness or death if exposed to COVID-19”; or

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- the employee “has any condition certified by a healthcare professional as putting the employee at heightened risk if exposed to COVID-19.”

The employer may not require an employee requesting EPSL to find or secure a replacement to fill in for the employee while the employee is using EPSL. Employers may want to be aware that the ordinance defines “family member” broadly.

## **Intermittent Use**

Employees may use EPSL on an intermittent basis in one-hour increments, as necessary. Employers may not require an employee using intermittent EPSL to use more than one-hour increments. Additionally, employers may not require an employee to take other forms of personal leave before taking EPSL.

## **Verifying Need for Leave**

Employers may “take reasonable measures to verify or document that an employee’s use of EPSL is lawful,” but they may not require an employee to “incur expenses in excess of five dollars in order to demonstrate his or her eligibility for [EPSL].”

Employers may not require an employee obtain a doctor’s note in order to take EPSL, except when the employee requests EPSL based on a condition certified by a healthcare professional as putting the employee at a heightened risk. In that limited scenario, the employer may request the certification, which the employee may obtain by virtual or telephonic appointment. However, an employer may not require an employee to disclose the underlying condition.

## **Payout of Accrued Oakland Paid Sick Leave**

If an employer with 50 or more employees lays off an employee, it “must compensate the employee for all paid sick leave accrued” under Oakland’s Paid Sick Leave Law (non-supplemental leave) immediately upon separation. The employer need not pay the employee for unused EPSL.

## **Retaliation**

The ordinance prohibits retaliation, discrimination, and interference with an employee’s exercise, or attempted exercise, of rights under the ordinance. An employer violates this provision if it terminates the employment of an employee within 120 days after it receives notice of an employee’s making a complaint, participating in an enforcement or civil action, or otherwise asserting his or her rights under the ordinance, unless the employer has clear and convincing evidence of just cause for the termination.

## **Employer Credit Toward EPSL Obligation**

Employers that have allowed employees to accrue at least 160 hours of paid personal leave after February 3, 2020, are exempt from providing EPSL, if they allowed employees immediate access to 80 hours of paid leave on May 12, 2020 (the EPSL ordinance’s effective date), for the purposes identified in the ordinance. If an employee used paid personal leave prior to May 12, 2020, the employer must provide additional leave to bring the employee’s “paid personal leave balance to 80

hours” to be used for the purposes described above.

The ordinance also provides an exemption to employers that after February 3, 2020, already provided their employees with paid personal leave in the amounts required by the ordinance. For this exemption to apply, “the paid personal leave must be in addition to any paid leave that the Employer was otherwise required to provide pursuant to a collective bargaining agreement, employment contract, or public policy.”

## **Exempt Employers**

*Healthcare and Emergency Responders.* Healthcare providers and emergency responders are exempt from the ordinance. Employers are required to retain information and records justifying the exemption for three years.

*Government.* The ordinance excludes federal, state, and local government agencies from the ordinance’s definition of “employer.”

## **Notice Requirement**

The ordinance requires the City of Oakland to create and publish through electronic communications and on its website a notice for employers to inform employees of their rights under the ordinance. Within three days of publication, employers must give notice to employees of their rights under the ordinance. Employers must provide notice “in a manner calculated to reach all employees, including, but not limited to, posting in a conspicuous place at the workplace; via electronic communication; or posting in a conspicuous place in an employer’s web-based or app-based platform.” Employers shall provide notification in “all languages spoken by more than 10 percent (10%) of employees.”

## **Enforcement**

The City of Oakland is authorized to take enforcement action through the Department of Workplace and Employment Standards. Additionally, the city, the city attorney, or any aggrieved employee may bring a civil action in court to obtain reinstatement, back pay, injunctive relief, penalties, attorneys’ fees, and interest.

## **Expiration**

The ordinance is in effect until December 31, 2020, unless otherwise extended.

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