

California Wine Country Pours Out Another Round of Paid Sick Leave Benefits

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On August 18, 2020, Sonoma County joined the ranks of ten other California cities and counties that have enacted local supplemental paid sick leave ordinances related to COVID-19.¹ The Board of Supervisors voted to approve the Ordinance² as an urgency ordinance, meaning it became effective immediately and shall sunset on December 31, 2020. It will automatically be extended to align with any extensions of the federal Families First Coronavirus Response Act (“FFCRA”).

Covered Employers and Employees

Intended to act as a complement to the FFCRA (and cover those businesses otherwise excluded under the FFCRA), the Ordinance applies to employers with 500 or more employees nationwide, and extends benefits to any employee who has worked for an employer for more than two hours within the geographic boundaries of the unincorporated areas of Sonoma County.

Unlike the FFCRA, there is no hardship exception for employers of healthcare providers and emergency responders. Accordingly, such leave must be provided regardless of whether it creates an operational hardship to the employer.

Qualifying Reasons for Use of Paid Sick Leave

An employee who cannot work, *or telework*, may use the supplemental paid sick leave benefit for the following reasons:

1. The employee has been advised by a health care provider to isolate or self-quarantine to prevent the spread of COVID-19;
2. The employee is subject to quarantine or isolation by federal, state or local order due to COVID-19;
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

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4. The employee needs to care for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID19, or has been advised by a health care provider to self-quarantine related to COVID-19, or is experiencing COVID 19 symptoms and is seeking a medical diagnosis; or
 5. The employee takes time off work to provide care for an individual whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation.

"Individual" for purposes of the Ordinance includes an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined, or whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation. "Individual" does not include persons with whom the employee has no personal relationship.

An employee need only provide a written request for leave for a qualifying reason (including, but not limited to, via electronic mail and text) to be entitled to the supplemental paid sick leave benefit.

Amount of Paid Sick Leave Benefit

Full time employees who are normally scheduled to work 40 or more hours per week are entitled to receive up to 80 hours of supplemental paid sick leave. Part-time employees normally scheduled to work fewer than 40 hours per week are entitled to receive supplemental paid sick leave in an amount no greater than the employee's average number of work hours in a two-week period, calculated over the past six months.

Supplemental paid sick leave must be paid out at the employee's regular rate of pay, but may be capped at \$511 per day, and \$5,110 in total per employee.

An employer may not require an employee to use any other form of sick leave or paid or unpaid time off before the employee is permitted to use paid sick leave under the Ordinance.

The supplemental paid sick leave hours are in addition to any paid sick leave otherwise available under California's paid sick leave law or an employer's existing paid time off benefits (e.g., PTO, vacation, sick leave) provided before March 16, 2020. Employers who already provide employees with adequate paid leave benefits may use such benefits as an offset to the Ordinance's requirements. To the extent an employee has at least 80 hours of paid sick leave benefits accrued as of August 18, 2020, or at least 160 hours of accrued paid sick leave, PTO, and/or vacation combined, the obligation to provide benefits under the Ordinance shall be deemed satisfied. To the extent an employee's accrual does not satisfy one of these requirements, the employer must furnish supplemental paid sick leave to account for the deficiency.

Documentation

Employers are not permitted to require employees to provide doctors' notes or other supporting documentation to support a request for leave under the Ordinance, and may only take "reasonable measures" to confirm an employee's eligibility for supplemental paid sick leave (such as requiring

employees to identify the qualifying reason for the leave), consistent with the limitations set forth in the FFCRA and its corresponding regulations and guidance. Employers are also prohibited from requiring employees to find a replacement as a condition of obtaining leave.

Notice, Recordkeeping Requirements, and Prohibition Against Retaliation

Employers are required to provide written notice to employees of their rights under the Ordinance by posting a notice, either in the workplace or on an intranet or app-based platform, or by distributing the notice via email, in both English and Spanish. Employers must maintain a record of each employee's name, the hours worked, and pay rate for at least three years.

The Ordinance prohibits discrimination and retaliation against any employee for requesting to use or using supplemental paid sick leave benefits provided by the Ordinance, or for opposing any practice proscribed by the Ordinance, or otherwise enforcing or asserting his or her rights under the Ordinance.

With the growing patchwork of local COVID-19 related paid sick leave ordinances throughout the state of California, large employers may find it increasingly difficult to establish timely, uniform policies for workers. Employers should nevertheless take steps to promptly inform employees of their rights and benefits under such laws.

¹ Currently, the City of Los Angeles, County of Los Angeles, Long Beach, San Francisco, Oakland, San Jose, County of San Mateo, Sacramento and Santa Rosa have enacted local ordinances. There is also a separate statewide Executive Order granting emergency paid sick leave to food sector

workers.

² The Ordinance is referred to as "An Urgency Ordinance of the Board of Supervisors of the County of Sonoma, State of California, to Establish Supplemental Paid Sick Leave Requirements for Certain Private Employers for COVID-19 Related Reasons."