

COVID-19: LOS ANGELES ISSUES ORDER EXEMPTING CERTAIN BUSINESSES FROM PROVIDING SUPPLEMENTAL PAID SICK LEAVE TO EMPLOYEES AFFECTED BY COVID-19

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The City of Los Angeles has issued a new order relieving several categories of businesses from their obligations to comply with the City's requirements for employers to provide supplemental sick leave pay to employees affected by COVID-19. On March 27, 2020, the Los Angeles City Council passed an [ordinance](#) that required all employers to provide supplemental sick leave pay to employees affected by the COVID-19 crisis. On April 7, 2020, however, Los Angeles Mayor Eric Garcetti issued an [emergency public order](#) (the "Order") to replace the ordinance. The Order retains the structure from the ordinance regarding which employees qualify for supplemental sick leave pay and the hours of pay to which they are entitled, but it narrows the scope of which employers are required to provide supplemental sick leave pay.

The Order sets forth requirements for an employee to receive supplemental sick leave pay. The employee must (1) have been employed by the same employer from February 3, 2020 through March 4, 2020 and (2) be unable either to work or telework. An employee who qualifies can receive supplemental sick leave pay upon an oral or written request in one of the following scenarios:

- The employee takes time off due to a COVID-19 infection;
- The employee takes time off because a public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19;
- 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;
- 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
- 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 official's recommendation. This provision, however, is applicable only to an employee who is unable to secure a reasonable alternative caregiver.

If an employee meets the requirements to receive supplemental sick leave pay, an employer cannot require the employee to provide a doctor's note or other similar documentation to receive such pay.

The Order also specifies the amount of supplemental sick leave pay owed to qualifying employees. The Order entitles qualifying employees who either work at least 40 hours a week, or are classified as full-time employees, to receive 80 hours of supplemental paid sick leave, calculated based on the employee's average two-week pay over the time period of February 3, 2020 through March 4, 2020. The Order permits an employer to offset from these 80 hours any paid leave hours that the employer allowed an employee to take for the above-described reasons, excluding previously accrued hours. The Order does not provide a specified number of hours of supplemental paid sick leave for employees who work less than 40 hours per week and are not classified as full-time employees, but it states they shall receive the supplemental sick leave pay "in an amount no greater than the [employees'] average two-week pay" over that time period. The Order imposes a cap on the amount of supplemental sick leave pay qualifying employees can receive, however, limiting amounts recoverable to \$511 per day and \$5,110 in the aggregate.

The Order significantly narrows which employers are required to provide supplemental sick leave pay. The ordinance's scope encompassed all employers with over 500 employees nationwide. The Order, by contrast, applies only to employers who have either (1) 500 or more employees in the City or (2) 2,000 or more employees throughout the United States. The Order also exempts the following categories of employer who meet either (or both) of the "500 employees in the city" or "2,000 employees nationwide" thresholds from their obligations to provide supplemental sick leave pay:

- Employers of emergency personnel¹ and health care workers;²
- Employers of global parcel delivery service workers;
- Employers that have a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually;
- Businesses that started in the City or relocated from outside the City on or after September 4, 2019 through March 4, 2020. Employers cannot qualify under this exemption if they (1) were in business in the City in the 2018 tax year; (2) are construction businesses as defined in Section 21.30 b.1 of the Los Angeles Municipal Code; or (3) are film producers as defined in Section 21.109 of the Los Angeles Municipal Code;
- Government agencies; and
- Businesses and organizations 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 to their employees because of the COVID-19 pandemic.

Employers should note that the Order defines "employer" to include not just the business entity, but "corporate officer[s]," "executive[s]," and "any other person, including through the services of a temporary service or staffing agency or similar entity, [who] employs or exercises control over the wages, hours[,] or working conditions of any Employee." Employees who suffer violations of the Order can sue their employers for penalties up to and including reinstatement; back pay and withheld supplemental sick leave; and reasonable attorneys' fees and costs.

For more information on what California and other states have done in efforts to combat COVID-19, please see the firm's [COVID-19 resources page](#).

FOOTNOTES

¹ The Order defines “Emergency Personnel” as “individual[s] 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.”

² The Order’s definition of “health care worker” “encompass[es] 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.”

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