

## Updates

May 06, 2020

COVID-19 Supplemental Paid Sick Leave Mandated for Employees Working in Unincorporated Areas in Los Angeles County for Employees of Employers With 500 or More Employees Nationally

**Update:** Based on a recent update, it appears the County of Los Angeles has modified its position on the [Worker Protection Ordinance](#), removing an employer's right to require a doctor's note and instead providing that an employer may require **documentation** "as allowed pursuant to the Families First Coronavirus Response Act . . . and the related Federal Department of Labor Rules and Regulations." However, an employee may begin using the supplemental paid sick leave prior to obtaining any such documentation.

Employers should ensure they continue to monitor city and county updates in light of the constantly evolving legislation as to these new and unique matters.

**Original text:** Los Angeles County enacted the [COVID-19 Worker Protection Ordinance](#) on April 28, 2020, which provides that an employee performing **any work** within the geographic boundaries of the [unincorporated areas](#) of Los Angeles County who cannot work or telework and requests **in writing** supplemental paid sick leave from his/her employer is entitled to supplemental paid sick leave for the following COVID-19-related reasons:

1. 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 subject to a federal, state, or local quarantine or isolation order related to COVID-19 (for example, 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 needs to care for a family member (qualifying family members are specified in the ordinance) who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 **or** has been advised by a healthcare provider to self-quarantine related to COVID-19; or
4. The employee takes time off work because he/she needs to provide care for a family member whose senior care provider or whose school or childcare provider ceases operations in response to a public health or other public official's recommendation.

An employer who is subject to the ordinance is defined as an employer with 500 or more employees nationally. Employer includes a corporate officer or executive, who directly, indirectly, or through an agent or any other person (including through the services of a temporary service, staffing agency, or similar entity) employs or exercises control over the wages, hours, or working conditions of any employee.

There is a **presumption** that a worker is an employee and the **employer has the burden** of demonstrating that the worker is a bona fide independent contractor and not an employee.

Employees who work at least 40 hours per week or are classified by their employers as full-time are entitled to 80 hours of supplemental paid sick leave, in an amount no greater than an employee's **highest** average two-week pay between January 1, 2020, and April 28, 2020.

Employees who work less than 40 hours per week and are not classified as full-time by their employers are also entitled to supplemental paid leave, in an amount no greater than the employee's average two-week pay between January 1, 2020, and April 28, 2020.

Similar to the Families First Coronavirus Response Act (FFCRA) and the City of Los Angeles's COVID-19 Supplemental Paid Sick Leave Ordinance, the cap for supplemental paid sick leave is \$511 per day and \$5,110 in the aggregate.

The ordinance provides an offset for employers who have already begun allowing employees to take paid leave on or after March 31, 2020, for any of the reasons provided in the above categories 1 through 4 (related to COVID-19), above and beyond an employee's regular or previously accrued leaves (for example, sick or personal leaves). Employers are prohibited from discriminating against employees for requesting to use or using supplemental paid sick leave, participating in proceedings related to the ordinance, or otherwise seeking to enforce their rights lawfully under the ordinance. The ordinance provides an enforcement mechanism allowing employees to bring claims in violation of the ordinance, including the potential for an employee to recover attorneys' fees and costs. An employee cannot waive his/her individual rights under this ordinance.

This ordinance will remain in effect until December 31, 2020, unless the Board of Supervisors takes an action to extend it.

## **Frequently Asked Questions**

### **Does the COVID-19 Worker Protection Ordinance apply to employees working in the cities of Los Angeles, Santa Monica, Pasadena, Long Beach, etc.?**

No. This ordinance only applies to employees who perform any work within the geographic boundaries of the **unincorporated** areas of Los Angeles County. Note, however, that other orders may be applicable to Los Angeles County's incorporated cities, such as the City of Los Angeles. Helpful resources outlined below:

- [Alphabetical list of unincorporated areas within the county](#)
- [Map of the county's incorporated and unincorporated areas](#)
- [City of Los Angeles's COVID-19 Supplemental Paid Sick Leave Ordinance](#)
- Perkins Coie updates on the City of Los Angeles' [order](#) and [ordinance](#)

### **Are any employers exempt from providing supplemental paid sick leave under the Los Angeles COVID-19 Worker Protection Ordinance?**

Yes. Federal, state, and local government agencies are not considered employers under the ordinance.

### **Are any employees excluded from receiving supplemental paid sick leave?**

Yes. Food sector workers (as defined in the California governor's [Executive Order N-51-20](#)) are excluded from the definition of employee in the ordinance. The ordinance also provides that an employer may exclude employees who are emergency responders or healthcare providers from the leave requirement. Also, employees who are subject to a collective bargaining agreement (CBA) that expressly waives this ordinance in clear and unambiguous terms are exempt from the ordinance.

### **Who qualifies as an emergency responder under the Los Angeles COVID-19 Worker Protection Ordinance?**

Emergency responder is defined to mean an employee who provides emergency response services, including, but not limited, to any of the following: (1) peace officer; (2) firefighter; (3) paramedic; (4) emergency medical

technician; (5) public safety dispatcher or safety telecommunicator; (6) emergency response communication employee; (7) rescue service personnel; and (8) employees included in the definition of emergency responder in the regulations issued by the U.S. Department of Labor.

### **Who qualifies as a healthcare provider under the Los Angeles COVID-19 Worker Protection Ordinance?**

A healthcare provider is defined as an employee who provides emergency response services, including, but not limited, to any of the following: (1) medical professionals; (2) employees who are needed to keep hospitals and similar healthcare facilities well supplied and operational; (3) employees who are involved in research, development, and production of equipment, drugs, vaccines, and other items needed to combat the COVID-19 public health emergency; and (4) employees included in the definition of healthcare provided in the regulations issued by the U.S. Department of Labor.

### **Are qualifying employees working for joint employers entitled to supplemental paid sick leave from each employer?**

The ordinance provides that "Employees of joint employers are only entitled the total aggregate amount of leave specified for Employees of one Employer."

### **What if an employer already provides 80 hours of paid sick leave? Does that employer have to provide additional COVID-19 supplemental paid sick leave on top of the existing leave?**

Yes. The ordinance provides that the supplemental paid sick leave is **in addition to** any paid sick leave that may be available under California's Paid Sick Leave Law (Labor Code § 246).

### **Can an employer require that an employee use vacation time, paid time off, or other paid or unpaid leave before or in lieu of supplemental paid sick leave?**

No. The ordinance provides that employers cannot require employees to use any other paid or unpaid leave, paid time off, or vacation time provided before the employee uses supplemental paid sick leave, or lieu of supplemental paid sick leave.

### **Can an employee send a request for supplemental paid sick leave to their employer by email or text message?**

Yes. A written request for supplemental paid sick leave can be sent by email or text message.

### **Can employers require documentation for an employee's use of supplemental paid sick leave?**

Yes. The ordinance provides that an employer may require a doctor's note or other documentation for the use of Supplemental Paid Sick Leave.

In light of this new ordinance, employers with 500 or more employees nationally who have workers and/or a business in Los Angeles County should consult with experienced employment counsel to ensure they are in compliance.

## **Authors**

## **Explore more in**

[Labor & Employment](#) [Emerging Companies & Venture Capital Law](#)

## **Related insights**

Update

[\*\*HHS Proposal To Strengthen HIPAA Security Rule\*\*](#)

Update

[\*\*California Court of Appeal Casts Doubt on Legality of Municipality's Voter ID Law\*\*](#)