

SAN JOSE'S EMERGENCY PAID SICK LEAVE ORDINANCE

LEGAL ALERT

San Jose's Emergency Paid Sick Leave Ordinance

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On April 7, 2020, the San Jose City Council enacted the “COVID-19 Paid Sick Leave Ordinance” (the “Ordinance”). The Ordinance, **which takes effect immediately**, is meant to fill the gaps left by the federal Families First Coronavirus Response Act (“FFCRA”). The Ordinance **requires employers that are not subject to the FFCRA’s Emergency Paid Sick Leave** to provide employees who have worked at least 2 hours within the city with paid sick leave benefits if the employee cannot work for any of the following reasons:

- The employee is subject to quarantine or isolation by **federal, state, or local order** due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19;
- The employee is **advised by a health care provider to self-quarantine** due to COVID-19 or is caring for someone who is so advised;
- The employee **experiences symptoms** of COVID-19 and is seeking a medical diagnosis;
- The employee is **caring for a minor child** because a school or daycare is closed due to COVID-19.

Sick Leave Details:

- Full-time employees are entitled to 80 hours of paid sick leave.
- Part-time employees are entitled to sick leave hours equal to the number of hours worked on average over a two-week period (using the average number of hours the employee worked per day between November 8, 2019 and April 7, 2020).
- **If an employee uses paid sick leave for themselves, they shall be paid their regular rate of pay** up to \$511.00 per day, not to exceed an aggregate of \$5,110.00.
- If the employee is using sick time **to care for another person, they may be paid at two-thirds of their regular rate of pay** up to \$200.00 per day, not to exceed an aggregate of \$2,000.00.
- Paid sick leave benefits are available for an employee to use **immediately**.

The Ordinance does contain a few notable exemptions:

- First, the Ordinance **does not apply to employees who can work from home**.
- Second, if an employer **already provides employees with paid personal leave** equivalent to the paid sick time required by the Ordinance, **they need not provide additional paid sick leave**. To the extent that there is a differential between what the employer provides and what is required by the Ordinance, the employer need only provide paid sick leave in the amount of that differential.
- Finally, the Ordinance gives employers that are hospitals two weeks from the Ordinance's effective date (April 7, 2020) to comply with its requirements.

The FFCRA's Emergency Paid Sick Leave exempts employers with more than 500 employees, authorizes the Department of Labor to exempt businesses with less than 50 employees if doing so would jeopardize the viability of the business, and authorizes an employer to elect not to provide the benefit to employees who are health care providers or emergency first responders. Such exemptions **do not exist** in the Ordinance.

Unlike the FFCRA's Emergency Paid Sick Leave, the Ordinance **does not mention tax credits**. Thus, although small businesses with less than 50 employees may claim an exemption from the FFCRA, businesses should reconsider doing so because, pursuant to the Ordinance, **small businesses will still be required to provide paid sick leave but may be deprived of claiming any tax credits**.

The Ordinance is in effect until December 31, 2020.

For additional legal information regarding COVID-19, please visit our **COVID-19 Resources** website .

Hoge Fenton's **Employment Law** team is here to provide you with additional support throughout the COVID-19 pandemic. Please contact any of us below.



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