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Los Angeles City Council Adopts Paid Sick Leave For Large Employers And Protections For Grocery, Drug Retail, And Food Delivery Workers

Two new local ordinances passed by the Los Angeles City Council late last week and expected to be signed by Mayor Garcetti no later than April 7, 2020, provide relief to workers in the wake of the COVID-19 pandemic.

COVID-19 Supplemental Paid Sick Leave For Workers In Los Angeles

In an effort to protect workers not covered by the new federal Families First Coronavirus Response Act ("FFCRA"), on March 27, 2020 the Los Angeles City Council passed an ordinance mandating 80 hours (ten days) of supplemental paid leave for employees of businesses with more than 500 employees nationwide. City law already requires businesses operating in the City of Los Angeles to permit employees to accrue and use up to six days of paid leave annually. The new measure provides for ten additional paid sick leave days on top of the six paid sick days already mandated by existing local law.

Under the new ordinance, covered employees include individuals who perform any work within the geographic boundaries of the City of Los Angeles. Both full and part-time employees may be eligible for the supplemental paid sick leave. For purposes of the ordinance, a worker is presumed to be an "employee," and the employer has the burden to demonstrate that a worker is a bona fide independent contractor, not an employee.

Covered employers include any person, association, organization, partnership, business trust, limited liability company, or corporation. Under the ordinance, "Employer" also means a person, including a corporate officer or executive, who directly or indirectly through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any covered employee. However, the ordinance applies only to an employer with 500 or more employees nationally.

Exempt from the ordinance are "first responders" which include peace officers, paramedics, firefighters, emergency medical technicians,

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public safety dispatchers, and emergency response communication employees, and rescue service personnel.

An employee who has been employed with the same employer from February 3, 2020 through March 4, 2020, is entitled to Supplemental Paid Sick Leave as follows:

1. An employee who works at least 40 hours per week or is classified as a full-time employee by the employer shall receive 80 hours of Supplemental Paid Sick Leave. Supplemental Paid Sick Leave shall be calculated based on an employee's average two-week pay over the period of February 3, 2020 through March 4, 2020.

2. An employee who works less than 40 hours per week and is not classified as a full-time employee by the employer shall receive Supplemental Paid Sick Leave in an amount no greater than the employee's average two-week pay over the period of February 3, 2020 through March 4, 2020.

In no event shall the Supplemental Paid Sick Leave amount paid to an employee exceed $511 per day and $5,110 in the aggregate. Employees of joint employers are only entitled to the total aggregate amount of leave specified for employees of one employer.

An employer is required to provide Supplemental Paid Sick Leave upon the oral or written request of an employee if:

1. 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; or
2. 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; or
3. The employee takes time off work because the employee needs to care for a family member who is not sick but to whom public health officials or healthcare providers have required or recommended isolation or self-quarantine; or
4. 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.

An employer may not require a doctor's note or other documentation for the use of Supplemental Paid Sick Leave.

The obligation to provide the 80 hours of supplemental paid sick leave shall be reduced for every hour an employer allowed an employee to

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take leave for any of the covered reasons on or after March 4, 2020.

The ordinance expressly prohibits retaliation against any employee for asserting his or her rights under the ordinance. It also establishes a private right of action in civil court for any employee claiming a violation. Remedies include reinstatement, back pay and Supplemental Paid Leave unlawfully withheld, calculated at the employee's average rate of pay, and other legal or equitable relief the court may deem appropriate. If the employee is the prevailing party in any legal action taken under the ordinance, he or she may be awarded reasonable attorney's fees.

Any waiver by an employee of any or all provisions of the ordinance shall be deemed contrary to public policy and shall be void and unenforceable. However, provisions of the new ordinance may be expressly waived by a collective bargaining agreement.

The new ordinance will expire on December 31, 2020 unless the City Council takes action to extend the law.

The ordinance, as adopted by the City Council on Friday, March 27, 2020 can be found [here].

Protections For Grocery, Drug Retail, And Food Delivery Workers In Los Angeles

A separate new ordinance approved by the Los Angeles City Council on March 27, 2020 also establishes new protections for employees of grocery stores, retail drug stores, and food delivery platforms.

Under the new ordinance, "Employee" means any worker of a grocery retail, drug retail store or Food Delivery Platform that either physically works at a retail location that is open to the public, or shops or picks-up groceries and other food orders from a grocery retail store, restaurant, or other retail food facility for the purpose of delivering the items to a consumer. For purposes of the ordinance, a worker is presumed to be an "employee," and the employer has the burden to demonstrate that a worker is a bona fide independent contractor, not an employee.

Under the new ordinance, "Employer" means any of the following:

1. A grocery retail store in the City of Los Angeles that sells primarily food or household goods, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, and/or prepared foods;
2. A drug retail store in the City of Los Angeles that sells a variety of prescription and nonprescription medicines and miscellaneous items, including but not limited to drugs,

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pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods dry foods, beverages, prepared foods, and other merchandise; or

3. A "Food Delivery Platform," which means an online business that acts as an intermediary between a consumer and a grocery store, restaurant, or other food facility, and arranges for the delivery of the order from the grocery store, restaurant, or other food facility to a consumer in the City of Los Angeles.

The new ordinance requires covered employers to approve an employee's request to change a work schedule under any of the following circumstances:

1. To provide daycare for the employee's own child;
2. To provide care for a sick member of the employee's immediate family or member of its household; or
3. If the employee feels ill, exhibits symptoms of COVID-19 as identified by the Center for Disease Control, or suspects having been exposed to COVID-19.

In addition, the ordinance requires covered employers to offer additional hours to current employees (unless doing so would put the employee into overtime), before using a contract, temporary service, or staffing agency to perform work.

The ordinance also requires all Food Delivery Platforms to offer employees the option of a "no contact" delivery method and to provide written guidance to employees on how to safely make a "no contact" delivery.

The ordinance expressly prohibits retaliation against any employee for asserting his or her rights under the ordinance. It also establishes a private right of action in civil court for any employee claiming a violation. Remedies include reinstatement, back pay for each day during which the violation continues (to be calculated at the employee's average rate of pay), and other legal or equitable relief the court may deem appropriate. The prevailing party shall be entitled to reasonable attorney's fees and costs.

This ordinance will remain in effect until both the Governor's and Mayor's State of Emergency Orders are lifted.

The ordinance, as adopted by the City Council on Friday, March 27, 2020, can be found [here].

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