



San Francisco Public Health Emergency Leave Ordinance
Implementation Guidance

April 17, 2020

The Public Health Emergency Leave Ordinance (“Ordinance”) requires certain employers to provide employees with paid leave for specified reasons related to COVID-19. The San Francisco Office of Labor Standards Enforcement administers and enforces the Ordinance’s paid leave requirements.

Effective Date

1. Q: What are the effective dates of the Ordinance?

A: The Public Health Emergency Leave Ordinance took effect on April 17, 2020. As an emergency ordinance, it will expire on June 17, 2020 unless reenacted by the Board of Supervisors, or upon the termination of the Public Health Emergency, whichever occurs first.

Scope of Ordinance

2. Q: Which employers are covered by the Ordinance?

A: Employers with 500 or more employees worldwide must comply with the Ordinance for their covered San Francisco employees.

Note that employers that are defined as “Covered Employers” under the federal Family First Coronavirus Response Act are not covered by the Ordinance.

3. Q: In determining if an employer is covered by the Ordinance, are all of its employees counted, including those who work outside of San Francisco?

A: Yes. For the purpose of calculating employer size, all persons performing work for the employer are counted, whether or not the persons work in San Francisco.

4. Q: What if the number of employees that an employer employs fluctuates above and below 500?

A: If the number of employees fluctuates above and below 500 over the course of a year, calculate business size for the current calendar year based upon the average number of

employees per pay period during the preceding calendar year.

5. Q: Are employees of private sector employers at the San Francisco International Airport (SFO) covered by the Ordinance?

A: No. The Ordinance covers employees who are employed within the geographic boundaries of San Francisco, which does not include SFO.

6. Q: Are employees of private sector employers at the Presidio covered by the Ordinance?

A: No. The Ordinance does not cover private businesses located in “federal enclaves” such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA).

7. Q: Are franchises covered by the Ordinance?

A: In general, individually-owned franchises are not be covered by the Ordinance unless the number of employees across all businesses owned by the franchise owner is equal to at least 500 employees.

8. Q: Are businesses that have temporarily closed or suspended operations covered by the Ordinance?

A: Yes. See “Public Health Emergency Leave” and “Separation from Employment” sections below for further guidance.

Background

The Ordinance states: “Due to the public health emergency related to COVID-19 and the actions required to respond to the emergency, a growing number of workers across the City are unable to work (including telework) due to illness, exposure to others with the coronavirus, *business closures*, and family caregiving obligations related to closures of schools and care facilities and an inability to secure caregiving assistance. These conditions pose a severe and imminent threat to the health, safety, and economic well-being of San Franciscans and those who work in San Francisco (Section 1(d); emphasis added).”

The Ordinance further states: “This emergency ordinance will also address the current financial crisis of those employees in San Francisco not protected by the Act who are struggling to make ends meet *due to widespread closures*, lack of access to childcare and elder care, and other workplace disruptions, which are likely to continue to affect employees after the expiration of Order No. C19-07b and other shelter-in-place orders in Bay Area counties (Section 2(d)(4); emphasis added).”

9. Q: Which employees are covered by the Ordinance?

A: Any person providing labor or services for remuneration who is an employee under California Labor Code Section 2750.3, including a part-time and temporary employee who performs work as an employee within the geographic boundaries of the City, is covered by the Ordinance. “Employee” includes an employee who performs limited work within the geographic boundaries of the City if the employee would be considered an Employee under Rule 6 of the [rules implementing the Paid Sick Leave Ordinance](#).

10. Q: Are employees of “essential businesses” as defined by public health orders covered by the Ordinance?

A: Yes – but an employer of an employee who is a health care provider or an emergency responder (as defined in FAQ 11 below) may elect to limit the employee’s use of Public Health Emergency Leave, as outlined in FAQ 24 below.

11. Q: Who is a health care provider and emergency responder for potential limits on employee leave?

A: These terms are defined under the Ordinance consistent with 29 C.F.R. 826.30(c), as follows:

A **health care provider** is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

An **emergency responder** is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared

emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

12. Q: Does the Ordinance cover undocumented employees?

A: Yes. All employees who work in San Francisco – whether or not they are legally authorized to work in the United States – are covered by the Ordinance. OLSE will process an employee’s claim without regard to the employee’s immigration status. Employees filing a claim with OLSE will not be questioned about their immigration status.

13. Q: Does the Ordinance require employers to provide Public Health Emergency Leave to independent contractors?

A: No. The Ordinance applies to employees. However, merely labeling someone as an “independent contractor” does not make it so. Consistent with California law, whether a person is an employee or independent contractor is a fact-specific inquiry that is determined by a variety of factors.

For more information on how the State of California reviews issues relating to independent contractor status in wage and hour cases, see the California Labor & Workforce Development Agency [Employment Status Portal](#).

Amount of Public Health Emergency Leave

14. Q: When is Public Health Emergency Leave available to employees?

A: Public Health Emergency Leave is available to employees on the effective date of the Ordinance, April 17, 2020, regardless of how long the employee has been employed.

15. Q: Are the Ordinance’s requirements retroactive?

A: No. The Ordinance’s requirements took effect on April 17, 2020

16. Q: How much Public Health Emergency Leave is available to employees?

A: Employees who were full-time (40 hour per week) employees as of February 25, 2020 are entitled to 80 hours of Public Health Emergency Leave. Employees who were part-time employees as of February 25, 2020 are entitled to the number of Public Health Emergency Leave hours equal to the average number of hours over a two-week period that the employee was scheduled over the previous six months ending on February 25, 2020, including hours for which the employee took leave of any type.

For employees hired after February 25, 2020, the number of hours of Public Health Emergency Leave to which they are entitled is equal to the number of hours that the employee worked, on average, over a two-week period between the date of hire and the date upon which the leave is taken, including hours for which the employee took leave of any type.

Employees shall not be entitled to more than 80 hours of Public Health Emergency Leave.

17. Q: How many hours of Public Health Emergency Leave are employees entitled to use in a given work week?

A: Employers may limit an employee's use of Public Health Emergency Leave hours in a given work week to the average number of hours over a one-week period that the employee was scheduled over the previous six months ending on February 25, 2020, including hours for which the employee took leave of any type.

For employees hired after February 25, 2020, employers may limit an employee's use of Public Health Emergency Leave hours in a given work week to the average number of hours that the employee was scheduled, on average, over a one-week period between the date of hire and the date upon which the leave is taken, including hours for which the employee took leave of any type.

Employers may limit an employee's use of Public Health Emergency Leave such that the combination of employee hours worked and Public Health Emergency Leave in a given work week does not exceed the calculation above (the average number of hours that the employee was scheduled, on average, over a one-week period).

18. Q: Are employers required to provide Public Health Emergency Leave in addition to paid sick leave provided under the San Francisco Paid Sick Leave Ordinance (PSLO)?

A: Yes. Public Health Emergency Leave must be made available to employees in addition to any paid time off, including paid sick leave under the San Francisco Paid Sick Leave Ordinance, that the employer offered or provided to employees on or before April 17, 2020.

However, employers that provide additional paid leave in response to the COVID-19 outbreak are permitted to offset that leave from the requirement. The amount of Public Health Emergency Leave that an employer must provide is reduced for every hour of paid leave or paid time off consistent with the Ordinance that the employer allowed an employee to take, not including previously accrued hours or hours accrued under the PSLO, on or after February 25, 2020.

19. Q: Are employers required to provide Public Health Emergency Leave in addition to paid sick leave provided under the California Supplemental Paid Sick Leave Executive Order?

A: No. Employers that provide paid leave under the California Supplemental Paid Sick Leave Executive Order are permitted to offset that leave from the requirement. The amount of Public Health Emergency Leave that an employer must provide is reduced for every hour of California Supplemental Paid Sick Leave that the employee takes.

20. Q: Can an employer reduce its non-mandated paid time off policies in response to the Ordinance?

A: No. An Employer may not change any paid time off policies on or after April 17, 2020 except to provide additional paid leave.

21. Q: May employers provide bonuses or raise employee wages in lieu of providing Public Health Emergency Leave?

A: No. The provision of Public Health Emergency Leave under the Ordinance may not be waived unless, per Section 9 of the Ordinance, it is expressly waived through a bona fide collective bargaining agreement in clear and unambiguous terms.

Public Health Emergency Leave Use

22. Q: For what purposes can employees use Public Health Emergency Leave?

A: Except as provided for in FAQ 24 below, an employee may use Public Health Emergency Leave to the extent that the employee is unable to work (either at the employee's customary place of work or telework) due to any of the following:

- (1) The employee is subject to an individual or general Federal, State, or local quarantine or isolation order related to COVID-19. This includes, but is not limited to, an employee who is unable to work or telework due to Governor Newsom's Executive Order N-33-20, the shelter-in-place Order No. C19-07b, or any succeeding order requiring residents to stay in their homes during the emergency, or shelter-in-place orders issued in other Bay Area jurisdictions.

Further, this includes an employee who is a member of a "vulnerable population" who is unable to work or telework due to recommendations in Order No. C19-05, C19-07b, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or requiring additional restrictions for vulnerable or high-risk populations. As defined in Public Health Order No. C19-05, vulnerable populations include people who are (1) 60 years old and older; (2) people with certain health conditions such as heart disease, lung disease, diabetes, kidney

disease, and weakened immune systems; and, (3) people who are pregnant or were pregnant in the last two weeks.

- (2) The employee has been advised by a health care provider to self-quarantine.
- (3) The employee is experiencing symptoms associated with COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for a Family Member who is subject to an order as described in (1) above, has been advised as described in (2) above, or is experiencing symptoms as described in (3) above.
- (5) The employee is caring for a Family Member if the school or place of care of the Family Member has been closed, or the care provider of such Family Member is unavailable, due to the Public Health Emergency.
- (6) The employee is experiencing any other substantially similar condition specified by the Local Health Officer, or under Section 5102(a)(6) of the Families First Coronavirus Act, by the United States Secretary of Health and Human Services.

23. Q: Who qualifies as a Family Member under the Ordinance?

A: Family Member under the Ordinance is defined as it is under the Paid Sick Leave Ordinance, Admin. Code § 12W.4(a) as a: child; parent; legal guardian or ward; sibling; grandparent; grandchild; spouse or registered domestic partner under any state or local law; and Designated Person. These relationships include not only biological relationships but also relationships resulting from adoption, step-relationships, and foster care relationships.

“Child” also includes a child of a domestic partner and a child of a person standing in loco parentis.

“Parent” also includes a person who stood in loco parentis when the employee was a minor child, and a person who is a biological, adoptive, or foster parent, or guardian of the employee’s spouse or registered domestic partner.

“Designated person.” If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The PSLO requires that the opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 12W.3(a) and annually thereafter, with a window of 10 work days for the employee to make this designation. All “designated persons” under the PSLO shall automatically be deemed “designated persons” for the purposes of the Ordinance.

24. Q: For what purposes must employers provide health care providers and emergency responders Public Health Emergency Leave?

A: Employers of an employee who is a health care provider or an emergency responder (as defined in FAQ 11 above) may elect to limit such an employee’s use of Public Health Emergency Leave to the extent that the employee is unable to work (either at the employee’s customary place of work or telework) due to either of the following:

- (1) The employee has been advised by a health care provider (as that term is defined in [29 C.F.R. § 825.102](#)) to self-quarantine.
- (2) The employee is experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and does not meet the [Centers for Disease Control and Prevention guidance](#) for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

25. Q: Does the Ordinance require employers to permit employees to use Public Health Emergency Leave when they are working or scheduled to work outside of San Francisco?

A: No.

26. Q: Does the Ordinance require employers to permit employees to use Public Health Emergency Leave for hours they are not scheduled to work?

A: Yes.

Background

The Ordinance states: “**Public Health Emergency Leave may be taken regardless of whether and when the Employee is scheduled to work**, provided that the total number of hours of leave taken in a week may not exceed the average number of hours over a one-week period that the Employee was scheduled over the previous six months ending on February 25, 2020, including hours for which the Employee took leave of any type (Section 5(c); emphasis added).”

For example:

- A full-time (40 hour per week) employee, unable to work (or telework) for a qualifying reason, is scheduled to work this week but is not on the schedule for the following week. The employee is entitled to use 80 hours of Public Health Emergency Leave, up 40 hours per week.
- A full-time (40 hour per week) employee voluntarily reduced her hours to 20 hours per week to care for her child when her child’s school closed due to the

public health emergency. The employee is entitled to use up to 80 hours of Public Health Emergency Leave to account for her reduction in hours during the school closure. The employee would be entitled to combine work hours and Public Health Emergency Leave up to 40 hours per week.

- A full-time (40 hour per week) employee had his hours reduced to 20 hours per week by his employer because the employer reduced operations due to a public health order limiting restaurants to takeout and delivery service. The employee is entitled to use 80 hours of Public Health Emergency Leave to account for his reduction in hours because the cause of the schedule reduction is the shelter-in-place order. The employee would be entitled to combine work hours and Public Health Emergency Leave up to 40 hours per week.
- An employee (part-time or full-time) is laid off because the business has been closed due to a public health order. Because the employee has been separated from employment (see “Separation from Employment” section below), the employee is not entitled to use Public Health Emergency Leave.

27. Q: Can an employer require an employee to work a different shift instead of taking Public Health Emergency Leave?

A: No. Employees and employers may agree to a schedule change in lieu of the employee using Public Health Emergency Leave, but the employer may not require it.

28. Q: Can an employer require an employee to use an alternative school or place of care for a Family Member if the employee seeks to use Public Health Emergency Leave when the Family Member’s school or place of care has been closed or is unavailable due to the public health emergency?

A: No. Employees may choose to use an alternative school or place of care for a Family Member in lieu of using Public Health Emergency Leave, but the employer may not require it.

29. Q: Can employers require advance notice for an employee’s use of Public Health Emergency Leave?

A: Employers may require employees to comply with reasonable notice procedures, but only when the need for Public Health Emergency Leave is foreseeable. However, in a particular case, an advance notification requirement may be unreasonable because the time required for the advance notification is excessive or the method required for providing advance notification is unnecessarily burdensome.

30. Q: What verification of Public Health Emergency Leave may employers require?

A: An employer may require an employee to identify the basis for requesting Public Health Emergency Leave, but may not require the disclosure of health information or other documentation, such as a doctor’s note or letter from a child care facility.

31. Q: Can an employer require an employee using Public Health Emergency Leave to find a replacement worker?

A: No. An employer may not require, as a condition of an employee’s taking Public Health Emergency Leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on Public Health Emergency Leave.

32. Q: Can an employer require its employees to take off the full day to use Public Health Emergency Leave?

A: No. Employers may not require, as a condition of an employee’s taking Public Health Emergency Leave, that the employee take paid sick leave in increments of more than one hour.

33. Q: How many hours of Public Health Emergency Leave may an employee use on days when the employee is scheduled to work more than 8 hours (i.e., when the employee is scheduled to work overtime hours)?

A: An employee may use Public Health Emergency Leave for all hours the employee is scheduled to work, including regular and overtime hours. However, all hours would be paid to the employee at the regular sick leave rate of pay.

Separation from Employment

34. Q: What constitutes a “separation from employment” under the Ordinance?

A: In determining whether or not there has been a “separation from employment” under the Ordinance, OLSE will consider all relevant circumstances including, but not limited to, whether an employer has demonstrated compliance with provisions of the [California Labor Code](#) and [California Unemployment Insurance Code](#).

35. Q: Is a “furlough” considered a separation from employment under the Ordinance?

A: No. As there is no standard definition as to what constitutes a “furlough” for private employers in California, OLSE will apply the standards listed in FAQ 34 above.

36. Q: Are employees entitled to use Public Health Emergency Leave after a separation of employment (e.g., layoff, quit, retirement)?

A: No. Upon an employee's separation from employment, that person is no longer an employee of that employer.

37. Q: Are employers required to pay out unused Public Health Emergency Leave upon separation of employment?

A: No. Upon an employee's separation from employment, an employer is no longer obligated to provide or pay for any Public Health Emergency Leave not used prior to separation.

If an employee separates from an employer for any reason and is rehired by the employer within one year from the date of separation, unused Public Health Emergency Leave shall be reinstated. The employee shall be entitled to use the unused Public Health Emergency Leave upon rehiring.

38. Q: Does unused Public Health Emergency Leave expire?

A. Yes. Public Health Emergency Leave expires upon the expiration of the Ordinance, unless an employer extends an employee's access to such leave.

Payment of Public Health Emergency Leave

39. Q: How should employers calculate the Public Health Emergency Leave rate of pay?

A: Public Health Emergency Leave must be compensated in the same manner as paid sick leave under the PSLO, Admin. Code § 12W.3(h), which provides two options for non-Exempt Employees. Employers may calculate Public Health Emergency Leave for non-Exempt Employees using the regular rate of pay for the workweek in which the employee uses Public Health Emergency Leave, whether or not the employee works overtime in that week. Alternatively, the employer may calculate Public Health Emergency Leave by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Public Health Emergency Leave for Exempt Employees must be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

In no circumstances may Public Health Emergency Leave be provided at less than the San Francisco minimum wage.

40. Q: What is the Public Health Emergency Leave rate of pay for an employee who has two jobs at different pay rates for the same employer (or an employee whose rate of pay fluctuates for the same job)?

A: For an employee who has two jobs at different pay rates for the same employer, or for an employee whose rate of pay fluctuates for the same job, the employer shall reimburse the employee at the employee's average hourly rate of pay for the six months prior to the date upon which the leave is taken.

41. Q: Are tips included when calculating the Public Health Emergency Leave rate of pay for tipped employees?

A: No. The Public Health Emergency Leave rate of pay is based only upon compensation paid by the employer.

42. Q: If an employer provides benefits on an hourly basis, is the employer required to provide the same benefits when its employees are using Public Health Emergency Leave hours?

A: Yes.

43. Q: When must employees be paid for Public Health Emergency Leave?

A: Public Health Emergency Leave must be paid no later than the payday for the next regular payroll period after the Public Health Emergency Leave was taken by the employee.

44. Q: Are employers required to list an employee's Public Health Emergency Leave balance on the employee's pay stub?

A: To the extent feasible, on the same written notice that an employer is required to provide under Section 246(i) of the California Labor Code, an employer shall set forth the amount of Public Health Emergency Leave that is available to the employee under this emergency ordinance. If an employer provides unlimited paid time off to an employee, the employer may satisfy this requirement by indicating on the notice or the employee's itemized wage statement "unlimited."

Employers may provide the Public Health Emergency Leave balance either on the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

This requirement shall apply only to employers that are required by state law to provide such notice to employees regarding paid sick leave available under California law.

Notice and Posting

45. Q: Are employers required to post a notice informing employees of their rights under the Ordinance?

A: Yes. Within three days of OLSE publishing the Public Health Emergency Leave notice on its website, employers must provide the notice to employees in a manner calculated to reach all employees: by posting in a conspicuous place at the workplace, via electronic communication, and/or by posting in a conspicuous place in an Employer's web-based or app-based platform. Every employer shall provide the notice in English, Spanish, Chinese, and any language spoken by at least 5% of the Employees who are, or prior to the Public Health Emergency were, at the workplace or job site.

The Public Health Emergency Leave notice is available at www.sfgov.org/olse.

Employer Records

46. Q: What records do employers need to retain to be in compliance with the Ordinance?

A: Employers must retain records documenting work schedules, hours worked, and Public Health Emergency Leave taken by employees. In the case of Exempt Employees, employers must maintain records of work schedules and days worked, but do not need to maintain records of actual hours worked. Employers must retain employee records for a period of four years even if the employee ceases to perform work in San Francisco or if there is a separation of employment. Employers must allow OLSE access to these records.

Exercise of Rights Protected; Retaliation Prohibited

47. Q: Can an employer have an absence control policy that may lead to discipline, discharge, demotion, suspension, or any other adverse action for an employee's use of Public Health Emergency Leave?

A: No. It is unlawful for an employer absence control policy to count Public Health Emergency Leave taken under the Ordinance as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

48. Q: Does the Ordinance prohibit retaliation against an employee for using Public Health Emergency Leave?

A: Yes. It is unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, reduce other employee benefits, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights

protected under the Ordinance.

Employees who believe that they have been subjected to retaliation may either file a complaint with OLSE or file a lawsuit in court against the employer.

49. Q: May employees covered by a collective bargaining agreement file a claim with OLSE?

A: Yes. All employees, including those covered by a collective bargaining agreement, may file a claim with OLSE. Note, however, that employees would be unable to file a claim with OLSE if the collective bargaining agreement expressly waives the Ordinance. See “Waiver through Collective Bargaining” below.

Waiver through Collective Bargaining

50. Q: Does the Ordinance apply to employees covered by a collective bargaining agreement?

A: Yes. Generally, the Ordinance applies to persons who perform work in San Francisco, including those employees covered by a bona fide collective bargaining agreement. A bona fide collective bargaining agreement is a written contract concerning wages, hours, and working conditions that is collectively bargained by an employer and a recognized union that represents the employees.

51. Q: May a collective bargaining agreement waive some or all of the provisions of the Ordinance?

A: Yes. The Ordinance permits waiver of some or all of its provisions through a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement (including a side letter agreement to such agreement), must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement may negotiate any language they desire to effectuate a waiver, provided that the language meets the “clear and unambiguous” standard of the Ordinance. OLSE will not interfere with or participate in the negotiation of such language.

There are different ways to accomplish an effective waiver in a collective bargaining agreement. One approach that OLSE recognizes for purposes of enforcement is as follows: “Waiver of San Francisco Public Health Emergency Leave Ordinance: To the fullest extent permitted, this agreement shall operate to waive any provisions of the San Francisco Public Health Emergency Ordinance, and shall supersede and be considered to have fulfilled all requirements of said Ordinance as presently written, and or amended during the life of this agreement.”

Please email further questions to PSL@sfgov.org or call (415) 554-6271