



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 1
File #: 20-930

Board Meeting Date: 12/8/2020

Special Notice / Hearing: None
Vote Required: 4/5ths

To: Honorable Board of Supervisors
From: Supervisor Dave Pine, District 1
Supervisor Warren Slocum, District 4
Subject: Extension of Emergency COVID-19 Paid Sick Leave Ordinance

RECOMMENDATION:

Adoption of an emergency ordinance amending the County's Emergency COVID-19 Paid Sick Leave Ordinance (Ordinance No. 4829) to clarify the Ordinance's integration with other laws and extend the Ordinance's expiration from December 31, 2020, to June 30, 2021, and waive the reading of the ordinance in its entirety.

BACKGROUND:

In response to the COVID-19 pandemic, the federal government enacted the Families First Coronavirus Response Act ("FFCRA"), which went into effect on April 1, 2020. The FFCRA, among other things, requires private employers with fewer than 500 employees to provide temporary paid sick leave for specific reasons related to COVID-19. The FFCRA's provisions apply from the effective date of April 1, 2020 through December 31, 2020, and it is administered and enforced by the U.S. Department of Labor's Wage and Hour Division. Although the federal government has not taken action to extend the FFCRA, a potential extension may occur under the new administration in light of the ongoing COVID-19 pandemic.

Following the enactment of FFCRA, Governor Gavin Newsom issued Executive Order No. N-51-20 on April 16, 2020, which required private employers, of any size, to provide supplemental paid sick leave to food sector workers for reasons related to COVID-19.

On July 7, 2020, the Board passed Ordinance No. 4829 (the "Ordinance"), which addressed the emergency paid leave coverage gap provided by the FFCRA and Executive Order No. N-51-20, by requiring employers with 500 or more employees within the United States to provide emergency paid leave to their employees working in unincorporated San Mateo County. Pursuant to Section 14 of the Ordinance, the deadline for employees to take such leave is December 31, 2020, on which date the Ordinance expires.

On September 9, 2020, Governor Newsom signed Assembly Bill 1867, which requires private employers with 500 or more employees to provide COVID-19 related supplemental paid sick leave to their employees. Unlike the County's Ordinance, AB 1867 does not require such employers to provide supplemental paid sick leave to workers who need to care for family members who are ill with COVID-19 or experiencing COVID-19 symptoms, or whose senior care providers, schools, or childcare providers are unavailable in response to a public health or other public official's recommendation. AB 1867, however, does allow covered employees to take this supplemental paid sick leave in situations where the employer prohibits employees from working due to COVID-19 transmission concerns. Notably, both Ordinance No. 4829 and AB 1867 contain offset provisions, which allow employees to access supplemental paid sick leave in all covered COVID-19 situations without the risk to the employer of duplicate sick leave entitlements. AB 1867 is in effect until December 31, 2020 or the expiration of any federal extension of the FFCRA, whichever occurs later.

DISCUSSION:

As of June 30, 2020, immediately prior to the County's adoption of its Emergency COVID-19 Paid Sick Leave Ordinance, there were 3,311 confirmed cases of COVID-19 and 108 deaths resulting from COVID-19 in the County. As of December 3, 2020, there were 15,217 confirmed cases of COVID-19 and 176 deaths resulting from COVID-19 in San Mateo County, and these numbers are expected to continue to rise during the winter months.

The Centers for Disease Control ("CDC") reports that as of December 4, 2020, the total number of U.S. COVID-19 cases has surpassed 14 million, with 275,386 deaths nationwide. The daily case count in the United States has been growing with alarming speed, with a record 219,187 new cases reported on December 3, 2020. Multiple news outlets have dubbed this increase in cases as the "third wave" of COVID-19, while those in the medical community, including William Hanage, associate professor of epidemiology at Harvard T.H. Chan School of Public Health, prefer to liken it to a "wildfire."

On November 16, 2020, as COVID-19 cases sharply increased across the country and California, Governor Newsom and state public health officials announced immediate actions to slow the spread of the virus, effectively "pulling an emergency brake" in the Blueprint for a Safer Economy, resulting in 94.1 percent of California's population in the most restrictive tier, effective November 17, 2020. The Governor further announced that the state will reassess data continuously and move more counties back if necessary. "We are sounding the alarm", the Governor stated. "California is experiencing the fastest increase in cases of cases we have seen yet - faster than what we experienced at the outset of the pandemic or even this summer. The spread of COVID-19, if left unchecked, could quickly overwhelm our health care system and lead to catastrophic outcomes".

Given the current and anticipated exponential growth in the number of COVID-19 cases heading into 2021, employees' need for supplemental paid sick leave will extend past the Ordinance's December 31, 2020, expiration date. This proposed ordinance would extend the expiration date of Ordinance No. 4829, including the deadline for employees to utilize the emergency paid sick leave provided under the Ordinance, from December 31, 2020 to June 30, 2021. Additionally, the proposed ordinance clarifies the integration and offset of any supplemental leave pursuant to federal or state law, or the laws of another local jurisdiction what would require the provision of emergency paid sick leave for the COVID-19 related purposes set forth in this Ordinance.

Pursuant to Government Code Section 25123(d), as an ordinance enacted for the immediate preservation of the public peace, health, or safety, this ordinance amending Ordinance No. 4829 would take effect immediately upon its passage.

FISCAL IMPACT:

There is no Net County Cost associated with adoption of this ordinance.