



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 1
File #: 20-506

Board Meeting Date: 7/7/2020

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: Emergency COVID-19 Paid Sick Leave Ordinance

RECOMMENDATION:

Adoption of an emergency ordinance requiring the provision of supplemental paid sick leave for COVID-19 related reasons for employees of employers with 500 or more employees in the unincorporated areas of San Mateo County.

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.

On April 16, 2020, Governor Gavin Newsom issued Executive Order No. N-51-20, which required private employers to provide supplemental paid sick leave to food sector workers for reasons related to COVID-19.

Taken together, the FFCRA and Executive Order No. N-51-20 ensure much needed COVID-19 related sick leave to employees. Those measures, however, do not apply to employees who are not food sector workers for private companies employing more than 500 employees. These employees are neither eligible for the emergency paid sick or expanded leave provisions of the FFCRA, nor the supplemental paid sick leave provisions of Executive Order No. N-51.20.

On April 14, 2020, the Board of Supervisors of the City and County of San Francisco approved an Emergency Ordinance for Public Health Emergency Leave ("SF Ordinance"), which temporarily requires private employers with 500 or more employees to provide up to 80 hours of paid sick leave

for reasons related to COVID-19. The SF Ordinance recognizes that the FFCRA exempts employers with 500 or more employees, leaving those employees without critical protections, and seeks to fill the gap. Similarly, this ordinance seeks to fill that same gap in the unincorporated areas of San Mateo County.

DISCUSSION:

As of March 15, 2020, immediately prior to the Health Officer's initial "shelter in place" order, 41 cases of COVID-19 had been identified in the County, and in the seven Bay Area jurisdictions jointly issuing "shelter in place" orders, there were at least 258 confirmed cases and three deaths resulting from COVID-19. As of June 30, 2020, there were 3,311 confirmed cases of COVID-19 and 108 deaths resulting from COVID-19 in San Mateo County alone.

Due to the public health emergency related to COVID-19 and the actions required to respond to the emergency, many workers across the County are unable to work due to illness, exposure to others with COVID-19, and family and household caregiving obligations related to closures of schools and care facilities.

The CDC's May 2020 Interim Guidance for Businesses and Employers recommends that in order to maintain healthy business operations, employers should implement flexible sick leave policies that are consistent with public health guidance. The CDC further advises that sick leave policies should permit employees to stay home to care for a sick family member or take care of children due to school and childcare closures. The American College of Occupational and Environmental Medicine has stated that paid sick leave is recommended to reduce the chances that a worker will come to work with COVID-19. In the absence of paid sick leave, many workers facing employment and economic insecurity will make the difficult decision to work when they should be quarantining or isolating themselves at home, posing a significant public health risk. Additionally, in the absence of paid sick leave, many workers will have no option other than to send their children to childcare providers or school when those children should be quarantining or isolating themselves at home, thereby posing a significant public health risk. These conditions pose a significant threat to the health, safety, and economic well-being of those who live or work in the County.

This proposed ordinance addresses the emergency paid leave coverage gap created by the FFCRA and Governor Newsom's Executive Order N-51-20, by extending emergency paid sick leave for reasons related to COVID-19 to employees who are working in the unincorporated areas of the County and are employed by businesses with 500 or more employees.

By way of summary, the ordinance will do the following:

- Effective July 8, 2020, private employers with more than 500 employees nationwide will be required to provide up to 80 hours of supplemental paid sick leave to their employees who work in the unincorporated area of the County;
- Covered employees may utilize this supplemental paid sick leave if:
 - 1) They have been advised by a health care provider to isolate or self-quarantine to prevent the spread of COVID-19;
 - 2) They are experiencing COVID-19 symptoms and are seeking a medical diagnosis;
 - 3) They need to care for an "Individual" (as defined 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 health care provider to self-quarantine related to COVID-19 or is experiencing COVID 19 symptoms and is seeking a medical diagnosis; or

- 4) They take time off work in order to care for an Individual whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation
- Given the importance that they report to work if they are able, employers may elect to limit health care providers, emergency responders, or airport security workers to using this supplemental sick leave to those situations where the employee has been advised to isolate or self-quarantine or where the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
 - Employees claiming a violation of this ordinance may bring an action against their employer and may be awarded, among other things, reinstatement, back pay, and attorney's fees and costs

Pursuant to Government Code Section 25123(d), as an ordinance enacted for the immediate preservation of the public peace, health, or safety, this ordinance shall take effect immediately upon its passage.

FISCAL IMPACT:

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