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California Updates:

COVID-19 Paid Sick Leave Ordinances for Unincorporated Los Angeles County and City of Oakland; Expanded Paid Parental Leave in San Francisco

- **Unincorporated Los Angeles County and the City of Oakland passed COVID-19 paid sick leave ordinances, following the footsteps of the State of California, San Francisco, the City of Los Angeles and San José.**
- **San Francisco also has expanded paid parental leave benefits.**

Unincorporated Los Angeles County - COVID-19 Paid Sick Leave

Unincorporated Los Angeles County (ULAC) unanimously passed its supplemental paid sick leave ordinance to help slow the spread of COVID-19 on April 28, 2020, but the ordinance states that covered employer's obligations preceded the ordinance's passage and commenced on March 31, 2020. Link here to a map of ULAC.

Covered Employers

The ordinance applies to private employees with 500 or more employees within the U.S., but it provides no guidance on how to calculate employee size.

Covered Employees

To qualify for supplemental paid sick leave, an employee must perform work within the geographic boundaries of ULAC. The ordinance expressly states that an employee will be presumed to be an employee, and that the employer has the burden to demonstrate that such worker is a bona fide independent contractor–not an employee.

Additionally, covered employers have the option to exclude employees who are health care providers and emergency responders, which are defined as follows:

- ***Health Care Providers*.** Employees who provide emergency response services, which includes the following non-exhaustive list of workers:
  1. Medical professionals;
  2. Employees needed to keep hospitals and similar health care facilities well supplied and operational;
  3. Employees involved in research, development, and production of equipment, drugs, vaccines, and other items needed to combat the COVID-19 public health emergency; and
  4. Employees included in the definition of health care provider in the regulations issued by the U.S. Department of Labor, which presumably refers to the federal Families First Coronavirus Response Act (FFCRA) regulations.

- ***Emergency Responders*.** Employees who provide emergency response services, which includes the following non-exhaustive list of workers:
  1. Peace officers;
  2. Firefighters;
  3. Paramedics;
  4. Emergency medical technicians;
  5. Public safety dispatchers ***or*** safety telecommunicators;
  6. Emergency response communication employees;
  7. Rescue service personnel; and
  8. Employees included in the definition of emergency in the regulations issued by the U.S. Department of Labor, again which presumably refers to the FFCRA regulations

Notably, essential food sector workers, subject to Governor Newsom's Executive Order N-51-20 that provides COVID-19 supplemental paid sick leave, are exempt from the ULAC ordinance.

Amount of ULAC Supplemental Paid Sick Leave

Covered employers must provide supplemental paid sick leave in the amounts outlined below:

1. Employees working at least 40 hours per week or are classified as full-time, must receive 80 hours of the leave. *The leave must be calculated by using an employee's highest average two-week pay during the time period from January 1 through April 28, 2020*.
2. Employees working fewer than 40 hours per week **and** are not classified as full-time must receive the leave in an amount no greater than their average two-week pay over the time period between January 1 through April 28, 2020.

If two or more covered employers jointly employ a covered employee, the employee is only entitled to the aggregate amount of the leave from one employer.

The supplemental paid sick leave is in in additional to California-state mandated, non-COVID-19 paid sick leave.

Covered employers may reduce their obligations to provide the supplemental paid sick leave for each hour a covered employee took voluntary COVID-19 leave on or after March 31, 2020, for one of the permissible reasons discussed in the next section, in an amount equal to or greater than the maximum allowable leave.

Use of ULAC Supplemental Paid Sick Leave

A covered employer must provide the supplemental paid sick leave to a covered employee if the employee is unable to work ***or*** telework for one of the following 4 reasons:

1. A public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19;
2. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. (*e.g., the employee is least 65 years old* ***or*** *has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system*);

3. The employee needs to care for a family member (*e.g., an employee's child, spouse or child*) who is subject to a federal, state, or local quarantine or isolation order related to COV1D-19 or has been advised by a health care provider to self-quarantine related to COVID-19; 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 childcare provider ceases operations in response to a public health or other public official's recommendation.

Covered employers can require an employee to provide a doctor's note or other documentation for use of the leave.

Paying for Supplemental Paid Sick Leave

The ordinance states that payment for the leave cannot exceed $511 per day or $5,110 in the aggregate.

Requests for Supplemental Paid Sick Leave

The ordinance expressly states that employers must provide supplemental paid sick leave to eligible employees upon written request, including but not limited to, email and text messaging.

Prohibitions

Covered employers are prohibited from doing the following:

1. Requiring a covered employee to use other paid or unpaid leave, PTO, or vacation time before or in lieu of using the supplemental paid sick leave; and
2. Discharging, reducing compensation, or otherwise discriminating against a covered employee for opposing any practice proscribed by the ordinance, requesting to use or actually using the supplemental paid sick leave, participating in proceedings related to the ordinance, or seeking enforcement of the employee's leave rights.

Penalties for Violations

A covered employee can file a lawsuit in the Superior Court of California (state court) for alleged violations of the ordinance, and a court can order the following remedies to a prevailing employee:

1. Reinstatement to the position the employee held at discharge;
2. Back pay and the supplemental paid sick leave unlawfully withheld, calculated at the employee's average rate of pay;
3. Other legal or equitable relief the court deems appropriate; and
4. Reasonable attorneys' fees and costs.

Expiration of the Supplemental Paid Sick Leave

Unless otherwise extended, the ordinance will expire on December 31, 2020.

No Tax Credits

Unlike with the FFCRA, covered employers will receive **no** tax credits for providing supplemental paid sick leave.

City of Oakland - COVID-19 Paid Sick Leave

On May 12, 2020, the City of Oakland unanimously passed a COVID-19 emergency paid sick leave (Oakland-EPSL) ordinance.

Covered Employers

The ordinance applies to all private employers ***except*** those with less than 50 employees between February 3, 2020 through March 4, 2020, excluding (1) unregistered janitorial employers, and (2) franchisees associated with a franchisor or network of franchises where that franchisor or network of franchises employs more than 500 employees in the aggregate, as defined in the ordinance.

As with the FFCRA, covered employers of employees who are ***health care providers*** and ***emergency responders***, as defined by the FFCRA regulations (29 CFR section 826.30(c)), may elect to be exempted from the ordinance. If an employer elects the exemption, for 3 years from the date of the exemption election, the employer must retain information describing all employee classifications exempted from Oakland-EPSL. For non-exempt classifications, the employer must document those classifications and provide notice of Oakland-EPSL rights to employees in non-exempted classifications.

Finally, employers that allow employees to accrue at least 160 hours of paid personal leave hours (e.g., sick, vacation) **and** allow employees immediate access to at least 80 hours of paid personal leave after May 12, 2020 for the uses allowed under the ordinance are exempt from providing Oakland-EPSL provide EPSL, but remain subject to the remaining provisions of the Oakland-EPSL ordinance.

Covered Employees

To qualify for Oakland-EPSL, an employee must (1) qualify as an employee entitled to payment of a minimum wage under California law; and (2) have worked within the City of Oakland for an employer for ***at least two hours*** after February 3, 2020. Please note that, recipients of public benefits, who as a condition of receiving such assistance, have performed ***at least two hours of work*** within the City of Oakland after February 3, 2020, are also eligible.

Amount of Oakland-EPSL

Covered employers must provide the leave as outlined below:

1. 80 hours **to** covered employees who worked for at least 40 hours per week within the City of Oakland during the period between February 3, 2020 through March 4, 2020 or at any point thereafter, or are classified as full-time employee; and
2. The average number of hours the covered employee worked within the City of Oakland over 14 days during the period of February 3, 2020 through March 4, 2020, using the 14 days as the highest number of hours worked within the City of Oakland during the period of February 3, 2020 through March 4, 2020, **to** covered employees who worked less than 40 hours per week over the period of February 3, 2020 through March 4, 2020 and who continue to do so after March 4, 2020.

Use of Oakland-EPSL

A covered employer must provide the leave to a covered employee for one of the following 8 reasons if the employee is unable to work ***or*** telework:

1. Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. Employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order ***or*** has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. Employee is caring for employee's son or daughter if the school or place of care has been closed, ***or*** the childcare provider is unavailable, due to COVID-19 precautions;
6. Employee is experiencing any other substantially similar condition specified by the U.S. Secretary of Health and Human Services in consultation with the Secretary of Labor and Secretary of the Treasury;
7. Employee needs to care for a family member who has been diagnosed with COVID-19 ***or*** is experiencing symptoms of COVID-19; or
8. Employee:
   a. Is at least 65 years old;
   b. Has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
   c. Has any condition identified by an Alameda County, California or federal public health official as putting the public at heightened risk of serious illness or death if exposed to COVID-19; ***or***
   d. Has any condition certified by a healthcare professional as putting the employee at a heightened risk of serious illness or death if exposed to COVID-19.

Covered employees may opt to use other leaves before using the leave, may take the leave in one-hour increments and intermittently, and may certify their need for the leave via virtual or telephonic healthcare provider appointments. Employers are prohibited from reducing or eliminating contributions to a covered employee's health benefits during the employee's use of the leave. Employers may credit any paid sick leave provided under the FFCRA against their obligation to provide the leave.

Requests for Oakland-EPSL

If foreseeable circumstances, a covered employee must provide the employer with notice as soon as practicable. Employers may take reasonable measures to verify or document that an employee use of the leave is lawful.

Paying Oakland-EPSL

Covered employers must pay eligible employee 100% of the employee's normal hourly rate, up to a limit of $511 per day or $5,110 in total for ***any use*** of the leave. Payment for the leave must be made no later than the payday for the next regular pay period after an employee takes the leave, but not more than 14 days after an employee takes the leave.

Layoffs: Payout of Accrued *Regular* Paid Sick Leave

Surprisingly, Oakland's ordinance mandates that, if a covered employer lays off a covered employee, the employer must pay the employee for all accrued, unused sick time pursuant to Oakland's regular Paid Sick Leave Ordinance immediately upon separation. However, employers are not required to pay unused supplemental paid sick leave hours at separation.

Posting Requirements

Covered employers must communicate the Oakland-EPSL Notice to covered employees in a manner that reaches all employees, which includes but is not limited to the following methods:

- Post in a conspicuous in-person place at the workplace;
- Post in a conspicuous place on the employer's web-based or app-based platform; or
- Via electronic communications (e.g., email).

Covered employers must provide the Notice in all languages spoken by 10% of covered employees. Below are links to the currently available Notices:

- English (link here)
- Spanish (link here)
- Chinese (link here)
- Vietnamese (link here)

Prohibitions

Covered employers are prohibited from doing the following:

1. Requiring a doctor's note or other documentation for use of the leave, ***except*** for conditions that require certification by a health care professional as putting the employee at heightened risk of a serious illness or death if exposed to COVID-19 (Employees are not required to disclose the condition);
2. Requiring employees to incur more than $5 in costs to demonstrate their eligibility for the leave;
3. Requiring employees to find or secure a replacement if they request the leave;
4. Requiring employees to waive their leave rights, ***except*** for a written, valid collective bargaining agreement; and
5. Interfering with, restraining, denying the exercise of, or the attempt to exercise, retaliating, or discriminating against an employee for the exercise of their leave rights.

Expiration of Oakland-EPSL

Unless otherwise extended, the ordinance will expire on December 31, 2020.

No Tax Credits

Unlike with the FFCRA, covered employers will receive **no** tax credits for providing the leave.

San Francisco's Expanded Paid Parental Leave Benefits

In conjunction with California's expansion of the statewide Paid Family Leave (PFL) benefits from 6 to 8 weeks that took effect on July 1, 2020 (Client Alert link here), San Francisco expanded its Paid Parental Leave Ordinance (PPLO) benefits to mirror the state's expanded PFL benefits. Thus, effective July 1, 2020, eligible employees can receive an additional two weeks of PPLO benefits—up to 8 weeks of PPLO supplemental compensation to bond with a new child (newborn, adopted or foster).

To be eligible for PPLO benefits, an employee must meet the following criteria:

1. Work in San Francisco;
2. Commenced employment with a covered employer at least 180 days before the start of the leave;
3. Works a minimum of 8 hours per week in San Francisco for the covered employer;
4. Works in San Francisco, at least, 40% of the total weekly hours for the covered employer; and
5. Apply for and receive PFL benefits from the California Employment Development Department.

During the bonding leave, the covered employer—*employer with an employee(s) working in San Francisco and with 20 or more employees worldwide*—must provide PPLO supplemental compensation to covered employees in an amount equal to the difference between the employees' PFL benefits and the employees' normal gross weekly wages. Thus, an employee's combined PFL and PPLO benefits must equal 100% of the employee's normal gross weekly wages, subject to a cap of $2,167 per week for 2020.

Covered employers should immediately post in a conspicuous area in their workplaces the updated PPLO Poster (link here). Also, employers must provide San Francisco employees with the PPLO form (links below), and the employees must submit the form in order to receive PPLO compensation.

- English instructions & PPLO form (link here);
- Spanish instructions & PPLO form (link here); and
- Chinese instructions & PPLO form (link here).

Please contact your Engage HR Consultant if you have questions.