

Los Angeles Expands Paid Sick Leave Hours Available to Employees of Large Companies

04/01/20

On March 27, 2020, the Los Angeles City Council passed an ordinance (“the Ordinance”) that provides up to 80 hours of supplemental paid sick leave (“SPSL”) to workers in the City of Los Angeles (“the City”) who are employed by companies with 500 or more employees nationwide, and who are not covered under the Families First Coronavirus Response Act (“FFCRA”). The Ordinance was passed with an “urgency clause,” which means that it goes into effect immediately upon publication. The Ordinance will remain in effect until December 31, 2020, unless the Los Angeles City Council decides to extend it. This Ordinance is one of many government measures designed to provide benefits and protections to employees who have been impacted by the COVID-19 outbreak.

Which Employers Must Provide Supplemental Paid Sick Leave?

All employers with 500 or more employees nationwide must provide 80 hours of SPSL to their employees working within the City and who were employed from February 3, 2020 to March 4, 2020.

Because all employers with 500 employees nationwide who have employees working in the City are subject to the Ordinance, even employers with only a small number of employees working in the City should count all of their employees nationwide when determining whether they meet the threshold for complying with the Ordinance.

Which Employees Are Entitled to Supplemental Paid Sick Leave?

The Ordinance applies to full-time and part-time employees who have been employed by the same employer from February 3, 2020 through March 4, 2020, and who performed any work in the City. This means that employees who are based outside of the City, but perform services in the City (such as pickups or deliveries), will also be entitled to the benefits of the Ordinance.

Independent contractors are not covered by the Ordinance, but employers have the burden to demonstrate that a worker is an independent contractor.

Are Any Employees Exempt from the Ordinance?

Yes. The following employees are exempt from the Ordinance:

- Health care providers as defined by California *Government Code* Section 12945.2; and
- First responders – peace officers, firefighters, paramedics, emergency medical technicians, public safety dispatchers or safety telecommunicators, emergency response communication employees, and rescue service personnel.

How is Supplemental Paid Sick Leave Calculated?

Full-time employees (those working 40 hours or more per week) working within the City may receive up to 80 hours of SPSL calculated by taking the employee's average two-week pay over the period of February 3, 2020 through March 4, 2020.

Part-time employees (those working fewer than 40 hours per week) are eligible to receive an amount no greater than the employee's average two-week pay over the period of February 3, 2020 through March 4, 2020.

No employee may receive more than \$511 per day, or \$5,110 total.

What if an Employer Has Already Provided Employees with Paid Leave?

SPSL under the Ordinance is in addition to paid sick leave already mandated by the State of California and the City. Additionally, many employers have already elected to provide employees some form of paid leave (other than mandatory paid sick leave) to help manage the COVID-19 crisis. Employers may offset against the newly required SPSL any hours it previously allowed an employee to take paid leave for COVID-19-related reasons after March 4, 2020; however, employers may not offset SPSL against previously accrued hours. For example, if an employer has already authorized an employee to use his or her accrued paid sick leave for COVID-19-related reasons, those hours cannot be used to offset the SPSL required under the Ordinance. But if after March 4, 2020 an employer gave a full-time employee 10 hours of paid leave for any of the COVID-19 purposes listed in the SPSL ordinance, *other than hours the employee had previously accrued*, the employer may offset the 10 hours against the 80 hours required by the SPSL Ordinance.

How Can Employees Request Supplemental Paid Sick Leave and for What Reasons May Employees Use Such Leave?

Employers must provide SPSL to covered employees upon their written or verbal request for any of the following reasons:

- A healthcare provider requires or recommends the employee isolate or self-quarantine;
- The employee is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system;
- To care for a family member who is not sick, but for whom public health officials or healthcare providers have required or recommended isolation or self-quarantine; or
- To provide care for a family member whose senior care provider or school or childcare provider caring for a child under the age of 18 temporarily closes in response to a public health or other public official's recommendation.

Notably, employers may not require employees to provide medical certification or any other documentation as a condition to receiving SPSL. However, employers should document which employees receive SPSL and how much they have taken.

May an Employer and Employee Contract Around This Ordinance?

The provisions of the Ordinance may only be waived through a collective bargaining agreement that is bilaterally modified.

Will Employers Receive Tax Credits for Providing Supplemental Paid Sick Leave?

No. Unlike the FFCRA, the Ordinance does not provide economic relief or tax credits to employers who are obligated to provide SPSL to employees.

Consequences of Non-Compliance

Employers who do not comply with the Ordinance or retaliate against employees who exercise their rights under the Ordinance will likely face costly litigation.

Covered employees may bring suit against an employer for remedies that include:

- Reinstatement if the employee was terminated;
- Back pay and withheld SPSL calculated at the employee's average rate of pay;
- Other legal and equitable relief as the court deems proper; and
- Attorneys' fees and costs if the employee is the prevailing party.

All employers should consult legal counsel for compliance issues and questions related to rapidly evolving COVID-19 legislation and policy.

If you have additional questions or need further assistance, please reach out to Monique Ngo-Bonnici (mbonnici@winston.com), Jason Campbell (jscampbell@winston.com), Zar Papazyan (zpapazyan@winston.com), or your Winston relationship attorney.

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