

CLIENT ALERT

Mayor Garcetti Signs Supplemental Paid Sick Leave Ordinance Superseding the Los Angeles City Council's Previous Ordinance

APRIL 17, 2020

On April 7, 2020, Los Angeles Mayor Eric Garcetti issued an emergency supplemental paid sick leave ("SPSL") ordinance ("the Ordinance"), which took effect immediately and supersedes the original SPSL ordinance the Los Angeles City Council passed on March 27, 2020, in response to the COVID-19 outbreak (see our client update regarding the March 27, 2020 ordinance [here](#)). The Ordinance will remain in effect until the end of the COVID-19 emergency period in Los Angeles ("the City"). Since the end date of the declared emergency period remains unknown, this Ordinance may be in place for a shorter period of time than the December 31, 2020 date set forth in the March 27, 2020 ordinance.

While many of the provisions of the March 27, 2020 ordinance remain unchanged by the Ordinance, the Ordinance exempts more employers and occupations from its reach and therefore is narrower in scope than its predecessor.

The key provisions of the Ordinance are discussed below.

WHICH EMPLOYERS MUST PROVIDE SUPPLEMENTAL PAID SICK LEAVE?

All employers with either: (1) 500 or more employees within the City, or (2) 2,000 or more employees within the United States must provide up to 80 hours of SPSL to their employees working within the City who were employed from February 3, 2020 through March 4, 2020.

The previous ordinance applied to employers with 500 or more employees nationwide. The Mayor's amendment will therefore subject fewer employers to 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, who performed any work in the City during that period, and who are unable to work or telework. This means that employees who are based outside of the City, but perform services in the City (such as pickups or deliveries), may also be entitled to the benefits of the Ordinance.

ARE ANY EMPLOYEES EXEMPT FROM THE ORDINANCE?

Yes. The Ordinance added to the categories of employees and employers that are exempt. If one of the following exemptions applies, SPSL is not mandatory:

- **Emergency and health care services personnel** as defined by California Government Code Section 12945.2 and the April 1, 2020 City of Los Angeles Safer at Home emergency order, and including gang and crisis intervention workers, public health workers, emergency management personnel, emergency dispatchers, law enforcement personnel, and related contractors and others working for emergency services providers.
- Employees of **governmental agencies** working within the course and scope of their public service employment.
- **New businesses** that started in the City or businesses that relocated from outside the City on or after September 4, 2019 through March 4, 2020. To qualify for this exemption, an employer could not have been in business in the City in the 2018 tax year.
 - Construction businesses as defined in Section 21.30 b.1 of the Los Angeles Municipal Code and film producers as defined in Section 21.109 of the Los Angeles Municipal Code will not qualify for this exemption.
- **Closed businesses.** Any business or organization that was closed or not operating for a period of 14 or more days due to a City official's COVID-19 emergency order, because of COVID-19 or that provided at least 14 days of leave to its employees because of COVID-19.
- **Critical parcel delivery employees** that provide global parcel delivery services.
- **Employers providing generous paid leave.** Any employer that has a paid leave or paid time off policy that provides a minimum of 160 hours of annual paid leave.

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 from 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 from 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. An employer 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 health care provider requires or recommends the employee isolates or self-quarantines;
- 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 health care 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.
- This provision is only applicable to employees who are unable to secure reasonable alternative care.

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 SPSL they have taken.

MAY AN EMPLOYER AND EMPLOYEE CONTRACT AROUND THIS ORDINANCE?

Generally, they cannot. However, a collective bargaining agreement in place on April 7, 2020 may supersede the provisions of the Ordinance, but only if the agreement contains COVID-19-related sick-leave provisions. When such a collective bargaining agreement expires or is renegotiated, it may waive the provisions of this Ordinance if the agreement is bilaterally modified.

WILL EMPLOYERS RECEIVE TAX CREDITS FOR PROVIDING SUPPLEMENTAL PAID SICK LEAVE?

No. Unlike the Families First Coronavirus Response Act, the Ordinance does not provide economic relief or tax credits to employers who are obligated to provide SPSL to employees.

WHAT ARE THE CONSEQUENCES OF NON-COMPLIANCE?

Employers who do not comply with the Ordinance or who retaliate against employees who exercise their rights under the Ordinance risk facing costly litigation.

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

- Reinstatement if the employee was terminated;

- Back pay and withheld SPSSL 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.

Employers subject to the Ordinance should become familiar with the provisions above and consult legal counsel with any compliance issues or questions related to rapidly evolving COVID-19 legislation and policy.

We note that government orders on the local, state, and federal level are changing every day, and the information contained herein is accurate only as of the date set forth above.

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.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

6 Min Read

Related Locations

Charlotte

Chicago

Dallas

Houston

Los Angeles

New York

San Francisco

Silicon Valley

Washington, DC

Related Topics

Labor & Employment

COVID-19

Related Capabilities

Labor & Employment

Related Regions

North America

Related Professionals



Jason Campbell



Zar Papazyan