



SUMMARY REPORT

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**Agenda Date:** 8/18/2020

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**To:** Board of Supervisors

**Department or Agency Name(s):** Board of Supervisors

**Staff Name and Phone Number:** Supervisor Susan Gorin 565-2241

**Vote Requirement:** 4/5th

**Supervisorial District(s):** Countywide

**Title:**

**9:30 A.M** - Adopt Urgency Paid Sick Leave Ordinance

**Recommended Action:**

Introduce, waive reading of and adopt Urgency Ordinance to adopt a local Urgency Paid Sick Leave Ordinance (4/5<sup>th</sup> Vote Required)

**Executive Summary:**

On June 9, 2020, your Board directed County Counsel to research whether general law counties such as the County of Sonoma may legally enact emergency paid sick leave ordinances in response to the COVID-19 pandemic, and to provide policy options for such an ordinance, if feasible.

On August 6, 2020, County Counsel reported that on balance, Article XI section 7 of the California Constitution (which gives general law counties broad police powers within their jurisdictional limits), appears to provide general law counties with the ability to legislate to adopt a local paid sick leave ordinance in response to the COVID-19 pandemic. At that time, your Board articulated the compelling public purpose of providing support to keep those infected with COVID-19 home and authorized County Counsel to draft an urgency local paid sick leave ordinance based upon Board direction regarding the scope and key policies.

This Report brings forward an urgency paid sick leave ordinance that incorporates the policy direction your Board provided on August 6, 2020, and requests your Board to introduce, waive the reading of, and adopt the attached urgency paid sick leave ordinance upon a four-fifths (4/5ths) vote.

**Discussion:**

**Background**

On January 31, 2020, the United States Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to the novel coronavirus. On March 3, 2020, the Board of Supervisors ratified the declaration of the local health emergency by the Public Health Officer and the proclamation of a local emergency by the Director of Emergency Services that began on March 2, 2020, due to COVID-19. Virus infection spread and hospitalizations have resulted in the County being placed on a State Watch List that resulted in State orders to close a number of business

sectors; however, significant segments of the economy remain open.

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (“the FFCRA” or “the Act”) to provide emergency paid sick leave to certain employees who are unable to work or telework due to the COVID-19 public health emergency. Generally, the FFCRA provides that employers with fewer than 500 employees must provide to employees: (1) up to 80 hours of paid sick leave at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; and (2) up to 80 hours of paid sick leave at two-thirds the employee’s regular rate of pay because the employee is unable to work due to the need to care for an individual subject to quarantine, or to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. The Act affords discretion to covered employers of health care providers and emergency responders in terms of affording such employees the paid sick leave and expanded family and medical leave benefits, should operational needs dictate otherwise. Further, small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide paid leave to an employee who requests leave due to school closings or child care unavailability, if providing leave to care for a child would jeopardize the viability of the business as a going concern. The FFCRA caps pay for Emergency Paid Sick Leave at \$511 per day (\$5,110 in the aggregate), or \$200 per day (\$2,000 in the aggregate), paid at 2/3’s the employee’s regular rate of pay, depending on the reason for taking the leave. The FFCRA is currently set to sunset on December 31, 2020.

The Act affords private employers who provide their employees the sick leave and expanded FMLA benefits under the legislation with a dollar-for-dollar Federal tax credit for the cost of providing the leave. Conversely, employers subject to similar local paid sick leave ordinances are generally unable to avail themselves of the federal tax credits, so the cost of the leave is borne by the employer.

The FFCRA federal legislative history indicates that employers with more than 500 employees were excluded from the Act because it is thought that such employers already furnish their employees with adequate paid sick leave benefits, and thus there is no need to include such employers in the Act. Nonetheless, the potential remains that private employers that have more than 500 employees in the unincorporated areas of the County may not necessarily provide their employees with at least 80 hours of paid sick leave or paid time off in a year that they can use for COVID-19 related purposes.

### **Prior Board Direction**

Your Board met on June 9, 2020, and gave direction to County Counsel to research whether a general law county, such as the County of Sonoma, could enact a local ordinance that would require private employers to afford employees not covered by the Families First Coronavirus Response Act with paid sick leave benefits.

Based on County Counsel analysis that such an action was likely authorized, on August 6, 2020, your Board voted to move forward with a local urgency paid sick leave ordinance, and provided direction to County Counsel to proceed with drafting such an ordinance. Your Board decided at that time the scope of the ordinance would be as follows:

- **Large private employers:** The ordinance will extend to all private employers in the unincorporated

areas of the County who have either 500 or more employees on either a local or national basis.

- **No carve outs:** There are no carve-outs for certain categories of employees.
- **Small business hardship (re childcare time) preserved:** The ordinance will maintain the hardship exemption that potentially allows small businesses with less than 50 employees to not have to furnish the paid leave benefits to employees for the purpose of caring for a child whose school or day care is unavailable due to COVID-19 related reasons, if doing so constitutes a financial hardship for the employer.
- **Pay is Capped at \$511 per day regardless of the reason for the need for the Leave:** The maximum pay an employee can receive per day for leave benefits under the Ordinance is \$511 per day, regardless of the reason for taking the leave (\$5,110 in the aggregate). (In other words, the FFCRA \$200 per day cap, paid at 2/3rds the employee's regular rate of pay, if the employee is taking the leave for reasons that are not personal to the employee, is not applicable.)
- **Offsets where leave benefits already provided:** Covered employers who already provide employees with adequate paid leave benefits may use such benefits as an offset to the local paid sick leave ordinance requirements. To the extent an employee has at least 80 hours of paid sick leave accrued as of the date of the ordinance, this shall be deemed to have satisfied the eighty (80) hour paid sick leave requirements under the ordinance. To the extent a covered employee has at least one hundred sixty (160) hours of a combination of paid sick leave, PTO, and/or vacation accruals as of the date of the ordinance, this shall be deemed to have fully met the local ordinance requirements.
- **Health care providers and emergency responders:** The Board removed the FFCRA "operational need" exemption for health care providers and emergency responders of private employers who have more than 500 employees in the unincorporated area of the County when the leave is taken: 1) when a health care provider or emergency responder has COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis, or is subject to a government quarantine or isolation order or a health care provider's advice to self-quarantine; and 2) when the purpose of the Leave is to care for an immediate family member who has COVID-19 or is experiencing symptoms of COVID-19, or where the immediate family member is subject to a government quarantine or isolation order or a health care provider's advice to self-quarantine. Therefore, the employer cannot elect to deny a health care provider or emergency responder the paid sick leave benefits required under the ordinance in such instances, even if furnishing the leave would create a staffing shortfall.  
Health care providers and emergency responders are afforded an exemption for "operational need" with respect only to sick leave benefits when needed to provide care for the employee's immediate family member whose senior care provider or whose school or childcare provider is closed or is unavailable due to COVID-19 reasons. In doing so, the employer must make a good faith determination that granting such leave would create a staffing shortfall such that operational needs dictate denial of some or all of the employee's request for use of the leave.

## Actions

The recommended action is to introduce, waive the reading of, and adopt the currently proposed urgency paid sick leave ordinance (Attachment A), to take effect immediately upon four-fifths approval and adoption.

## Prior Board Actions:

June 9, 2020 Minute Order directing County Counsel to return with options for a local Emergency Sick Leave

Ordinance.

August 6, 2020 Minute Order directing County Counsel to return with a draft urgency local Emergency Sick Leave Ordinance that incorporates the policy directions the Board gave on August 6<sup>th</sup>.

**FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY 19-20 Adopted</b>	<b>FY20-21 Projected</b>	<b>FY 21-22 Projected</b>
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>			

**Narrative Explanation of Fiscal Impacts:**

There are no financial impacts to the County; the ordinance only financially impacts those private employers in the unincorporated areas of the County who are subject to the ordinance.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>

**Narrative Explanation of Staffing Impacts (If Required):**

**Attachments:**

Attachment A - Draft Paid Sick Leave Ordinance

**Related Items "On File" with the Clerk of the Board:**