

ORDINANCE NO. ..
BOARD OF SUPERVISORS, COUNTY OF SONOMA,
STATE OF CALIFORNIA

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AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, TO ESTABLISH PAID SICK LEAVE REQUIREMENTS TO ALL EMPLOYEES IN THE UNINCORPORATED COUNTY FOR COVID-19 RELATED REASONS
URGENCY ORDINANCE: 4/5 VOTE REQUIRED

The Board of Supervisors of the County of Sonoma, State of California, ORDAINS as follows:

SECTION 1. Declaration of Emergency

On March 3, 2020, the Sonoma County Director of Emergency Services issued a proclamation of local emergency in Sonoma County, and the Sonoma County Health Officer declared a local health emergency, due to the introduction in the County of the novel coronavirus, “COVID-19.”

On March 4, 2020, Governor Newsom proclaimed a State of Emergency related to COVID-19 throughout the State of California. On March 13, 2020, the President issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.”

On March 17, 2020, the County Health Officer issued Order No. C19-03, directing the County to Shelter-in-Place to mitigate the spread of COVID-19, except as set forth in the Order to provide or receive certain essential services, engage in certain essential activities, and work for essential businesses and governmental services. Order No. C-19-03 was issued on evidence of increasing occurrence of COVID-19 within the community and the Bay Area, and the need to slow the rate of transmission to protect the most vulnerable and prevent the health care system from being overwhelmed. Since then, subsequent amendments to the Order and new orders have been issued by the County Health Officer, as well as the Governor.

On July 1, 2020, due to the increasing spread of COVID-19, the State Public Health Officer issued Guidance on Closure of Sections in Response to COVID-19, instructing counties that have been on the State’s “County Monitoring List” for three consecutive days or more to close indoor operations for certain sectors that promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult, in order to further mitigate the spread of the virus. Subsequent Orders have since been issued as well.

On August 31, 2020, the County Data Monitoring List was replaced by the Blueprint for a Safer Economy, which revised the criteria for businesses re-opening and the time between changing tiers, based on COVID-19 test positivity and adjusted case rates.

On November 16, 2020, as COVID-19 cases sharply increased across the country and California, Governor Newsom and state public health officials announced immediate actions to slow the spread of the virus, effectively “pulling an emergency brake” in the Blueprint for a Safer Economy, resulting in 94.1 percent of California’s population being placed in the most restrictive tier, effective November 17, 2020.

On December 3, 2020, Governor Newsom issued a Regional Stay at Home Order for Regions whose ICU capacity fell below 15%, triggering additional restrictions in said regions.

The Bay Area Region, which includes Sonoma County, was added to the Stay at Home order starting December 17, 2020. The Regional Stay at Home Order for the Bay Area Region ended on January 25, 2021, and Counties were returned to their appropriate tier under the Blueprint for a Safer Economy. Currently, the County of Sonoma remains in the purple tier, meaning the risk of coronavirus transmission risk level is “widespread.”

Due to the continuing public health emergency related to COVID-19 and the actions required to respond to the emergency, many workers across the County are and will be unable to work (including telework) due to illness, exposure to others with the coronavirus, business closures, and family and household caregiving obligations related to closures of schools and care facilities, and an inability to secure caregiving assistance. Additionally, due to a continued downturn in economic conditions and in order not to experience a loss of wages, many workers may decide to come into work notwithstanding that they exhibit symptoms of COVID-19 or have contracted COVID-19. These conditions pose a significant threat to the health, safety, and economic well-being of those who live or work in the County.

SECTION 2. Findings and Purpose

On March 18, 2020, then-President Trump signed into law the Families First Coronavirus Response Act (“FFCRA”), which provided emergency paid sick leave to certain employees who were unable to work or telework due to the COVID-19 crisis. The FFCRA exempted employers with 500 or more employees. The mandatory provisions of the FFCRA expired December 31, 2020, although covered employers who voluntarily elect to provide the leave benefits are entitled to a tax credit through March 21, 2021. President Biden recently announced, in the American Rescue Plan, a COVID-19 sick leave benefits package that is similar to the FFCRA, which would afford all employees, regardless of employer size, with over fourteen weeks of paid COVID-19 sick and family and medical

leave benefits through September 30, 2021. Federal tax benefits would be available to certain employers under the proposal.

On April 16, 2020, Governor Newsom signed Executive Order N-51-20, which extended paid sick leave benefits for food sector workers impacted by COVID-19.

On August 18, 2020, the Board enacted Ordinance No. 6320, which addressed the emergency paid leave coverage gap created by the FFCRA and Executive Order N-51-20, by extending emergency paid leave to employees working in the unincorporated areas of the County who are employed by businesses with 500 or more employees on a local or national basis. Ordinance No. 6320 was tied to the expiration of the FFCRA, and thus expired on December 31, 2020.

On September 9, 2020, Governor Newsom signed Assembly Bill 1867, which requires private employers with 500 or more employees to provide COVID-19 related supplemental paid sick leave to their employees. AB 1867 similarly expired December 31, 2020.

New Cal/OSHA COVID-19 related benefit protections became effective November 30, 2020. The Cal/OSHA protections require that employers provide paid time off to employees who are excluded from the workplace due to COVID-19 reasons and who are otherwise able and available to work.

On December 31, 2020, the FFCRA, AB 1867 and Ordinance No. 6320 expired, ending supplemental paid sick leave benefits for all employees, except to the extent employees are entitled to paid sick leave benefits under the Cal/OSHA regulations.

On January 26, 2021, the Board extended Ordinance No. 6320 through June 30, 2021, requiring employers in the unincorporated County with 500 or more employees to allow their employees the ability to use their accrued, unused supplemental paid sick leave balances.

This ordinance addresses the supplemental paid sick leave coverage gap created by the expiration of the FFCRA and AB 1867.

In enacting this Ordinance, the Board makes the following findings:

- (1) On June 8, 2020, the National Bureau of Economic Research officially declared a recession, noting that the U.S. economy had fallen into a broad contraction not confined to one sector;
- (2) Workers in Sonoma County continue to face significant employment and economic insecurity;
- (3) The Centers for Disease Control (“CDC”) reports that as of January 21, 2021, the total number of U.S. COVID-19 cases has surpassed 25 million, with over 423,500 deaths nationwide. Data from Johns

Hopkins University reports more than 79,000 deaths from coronavirus in January 2021 alone, making it the deadliest month for COVID-19 fatalities since the pandemic began. The daily case count in both the United States as well as the County continues to grow with alarming speed;

- (4) 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, and the CDC's Interim Guidance for Businesses and Employers recommended that in order to maintain healthy business operations, employers should implement flexible sick leave policies that are consistent with public health guidance;
- (5) 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;
- (6) 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; and
- (7) Given the expiration of the FFCRA, and the extension of Ordinance No. 6320, which continues to mandate that local employers in the unincorporated county with over 500 employees provide supplemental paid COVID-19 sick leave benefits, there is an urgent need for supplemental COVID-19 paid sick leave benefits for all employees in the unincorporated County, regardless of employer size, until such time as Federal and/or State legislation is passed.

By adopting this Ordinance, it will address the County's local health emergency in several regards:

- (1) The Local Health Officer's Orders were issued to ensure that the maximum number of people stay at home to slow the spread of COVID-19 to the extent possible. While Ordinance No. 6320 has been extended to provide supplemental paid COVID-19 sick leave benefits to employees of employers in the unincorporated county that have more than 500 employees, there is an urgent need to expand the supplemental paid COVID-19 sick leave to also apply to those employers in the unincorporated county with less than 500 employees, so as to close the coverage gap left by the expiration of the FFCRA. This ordinance is intended to assist employees working in the unincorporated areas of the County so that they will be financially better able to stay home and isolate if exposed to COVID-19, if they are exhibiting symptoms related to COVID-19, or they are

caring for an individual affected by COVID-19. By adopting this ordinance to allow employees access to accrued but unused supplemental paid sick leave during the current crisis, there will be a reduction in the likelihood that infected employees will report to work, or that any of their infected family members or household members will be out in the community during such period of infection, and will therefore decrease the spread of COVID-19 through interactions with fellow employees or members of the public.

- (2) With the continued closure of schools by school districts across the Bay Area, as well as limitations of other facilities providing education, childcare, elder care, or other family and household caregiving support, workers in the unincorporated areas of the County are facing significant caregiving impacts. By allowing employees to access accrued but unused supplemental paid sick leave benefits, this Ordinance makes it more likely that those employees will be able to care for their family and household members and ensure those family and household members stay home, thereby minimizing the spread of COVID-19 in the community.
- (3) This Ordinance will also address the current financial crisis of those employees working in the unincorporated areas of the County who are struggling to make ends meet due to widespread closures, lack of access to childcare and elder care, and other workplace disruptions, and which would cause such employees to otherwise choose between receiving a paycheck or minimizing the risk of the spread of COVID-19.
- (4) Due to the significant and extensive impact of COVID-19 on workers in the County, the extension of the economic downturn in 2021, and the current unknown timeframe for widespread distribution of an effective vaccine, this Ordinance will provide protection to covered employees through June 30, 2021.

SECTION 3. Authority and Operative Dates of the Urgency Ordinance.

The California Constitution, Article XI, Section 7 vests the County with authority to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Further, this Ordinance is approved pursuant to Sections 25123(d) and 25131 of the California Government Code, allowing for ordinances for the immediate preservation of the public peace, health, or safety, as well as Section 8634 of the Government Code, which authorizes ordinances necessary during a local emergency to provide for the protection of life and property. This ordinance is enacted for the immediate preservation of the public peace, health, or safety, and as an urgency ordinance enacted pursuant to Sections 25123(d) and 25131 of the California Government Code. The ordinance shall be effective immediately upon its introduction and passage by a 4/5 vote. This Ordinance shall sunset on June 30, 2021, but may

be extended by any action of the Board of Supervisors to extend this Ordinance.

This Ordinance repeals, supersedes and replaces Ordinance No. 6320.

Employers are not required to cash out any the unused Supplemental Paid Sick Leave benefits to Employees.

SECTION 4. Definitions.

For the purposes of this Ordinance, the following words, terms, and phrases have the meanings given to them in this section:

1. "Employer" means any person, defined in Section 18 of the California Labor Code, as "any person, association, organization, partnership, business trust, limited liability company, or corporation," who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employees. This Ordinance applies to all Employers within the unincorporated area of the County of Sonoma, regardless of the number of employees they employ. This Ordinance and the definition of Employer do not apply to federal, state, or local government agencies.
2. "Employee" means an individual, regardless of immigration status, employed by an Employer and who has worked for the employer for more than two (2) hours within the geographic boundaries of unincorporated Sonoma County. For purposes of this Ordinance, a worker is presumed to be an Employee, and an Employer has the burden to demonstrate that a worker is a bona fide independent contractor and not an Employee. For purposes of determining Employee status, applicable California law shall apply, including, but not limited to Labor Code section 2750.3
3. "Emergency Responder" and "Health Care Provider" are given the same meanings as were set forth in the FFCRA, and its rules, regulations and other guidance issued by the U.S. Department of Labor regarding the FFCRA.
4. "Individual" or "Care for an individual," for the purposes of this Ordinance means an Employee's immediate family member, a person who regularly resides in the Employee's home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined, or 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. For this purpose, the term "Individual" does not include persons with whom the Employee has no personal relationship. The meaning of these terms is intended to be consistent with those that were set forth in the FFCRA, its rules, regulations, and other

guidance that was issued by the U.S. Department of Labor regarding the FFCRA.

“Supplemental Paid Sick Leave” means time an Employee is compensated by an Employer for COVID-19 related leaves as described in this Ordinance.

Section V. Paid Sick Leave Ordinance

1. Supplemental Paid Sick Leave Entitlements.

- a. *Covered and Non-Covered Employers.* This Ordinance applies to all Employers within the unincorporated areas of the County of Sonoma.
- b. *Applicability to Health Care Providers and Emergency Responders.* Employers of Health Care Providers and Emergency Responders in the unincorporated areas of the County are required to furnish the Supplemental Paid Sick Leave benefits to such Employees in all instances where the leave is taken 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, regardless of whether taking leave for such purposes creates an operational hardship to the Employer. Supplemental Paid Sick Leave Benefits may also be taken by Health Care Providers and Emergency Responders employed by Employers in the unincorporated areas of the County when the purpose of the Leave is to Care for an Individual who has COVID-19 or is experiencing symptoms of COVID-19, or where the Individual is subject to a government quarantine or isolation order or a health care provider’s advice to self-quarantine, regardless of whether taking Leave for such purposes creates an operational hardship to the Employer.

Supplemental Paid Sick Leave Benefits may also be taken by Health Care Providers and Emergency Responders in the unincorporated areas of the County when the purpose of the leave is to provide Care for an Individual whose senior care provider or whose school or childcare provider is closed or is unavailable due to COVID-19 reasons. However, when the need for the Leave is due to such reasons, the Leave request may be denied in such instances where the Employer makes 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.

- c. *Amount of Paid Sick Leave Benefits.* An Employee who has worked a minimum of two (2) hours for an Employer has accrued Supplemental Paid Sick Leave hours as follows:

- i. A full-time Employee who is normally scheduled to work forty (40) or more hours per week may use up to eighty (80) hours of Supplemental Paid Sick Leave.
 - ii. A part-time Employee who is normally scheduled to work fewer than forty (40) hours per week may use Supplemental Paid Sick Leave in an amount no greater than the Employee's average number of work hours in a two-week period, calculated over the prior six (6) months.
 - iii. These Supplemental Paid Sick Leave hours have already been accumulated by Employees under either the now-expired FFCRA or the local Ordinance. This Ordinance will reinstate the time to use accrued Supplemental Paid Sick Leave benefits to the extent they have not already exhausted their COVID-19 paid sick leave accruals during the pandemic. Employers are only required to provide the Supplemental Paid Sick Leave hours on a one-time basis. An Employer may credit the total COVID-19 paid sick leave hours already furnished to an Employee under the FFCRA, AB 1867, Cal/OSHA regulations, and/or Ordinance No. 6320, as well as any substantially similar State or Federal COVID-19 paid sick leave legislation that may be enacted in the future, against the Supplemental Paid Sick Leave obligations required by this Ordinance. Nothing in this Ordinance shall require that Employers provide Employees with a new accrual of Supplemental Paid Sick Leave hours. This Ordinance will provide protection to covered employees through June 30, 2021, unless extended by the Board.
- d. *Permissible Basis for Receipt of the Benefit.* An Employer shall provide Supplemental Paid Sick Leave upon the written (includes, but is not limited to, electronic mail and text) request of an Employee if the Employee cannot work, or telework, because:
- i. The Employee has been advised by a health care provider to isolate or self-quarantine to prevent the spread of COVID-19;
 - ii. The Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19;
 - iii. The Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
 - iv. The Employee needs to care for an Individual who is subject to a federal, state, or local quarantine or isolation order related to COVID19, 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
 - v. The Employee takes time off work because the Employee needs to provide 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.

Supplemental Paid Sick Leave benefits are not available to Employees who are able to work from home.

- e. *Rate of Pay and Pay Cap.* The Supplemental Paid Sick Leave hours shall be paid at not less than the Employee's regular rate of pay, subject to the cap set forth below. In no event shall the Supplemental Paid Sick Leave amount paid to an Employee exceed \$511 per day and \$5,110 in the aggregate, regardless of the reason for the Leave. Employees of joint Employers are only entitled to the total aggregate amount of leave specified for Employees of one Employer.
- f. *Documentation and Replacements.* Employers may only take reasonable measures to confirm an Employee's eligibility for Supplemental Paid Sick Leave, in accordance with the limitations, applicable regulations or guidance issued by the United States Department of Labor. An Employer may require Employees to follow reasonable notice procedures only for foreseeable absences. Employers may require Employees to identify the basis for which the Employee is requesting leave under the Ordinance, but cannot require Employees to furnish a doctor's note or other supporting documentation. Employers are prohibited from requiring Employees to find or confirm a replacement as a condition of obtaining Leave under the Ordinance.
- g. *Coexistence with Other Available Forms of Leave.* The total number of hours of Supplemental Paid Sick Leave to which an Employee is entitled pursuant to this Ordinance shall be in addition to any paid sick leave that may be available to the Employee under California Labor Code Section 246, as well as any preexisting paid time off (vacation, sick and/or PTO) provided to Employees prior to March 16, 2020, subject to the below potential offsets. An Employer may not require an Employee to use any other paid or unpaid leave, sick pay, paid time off, or vacation time provided by the Employer to the Employee before the Employee uses Supplemental Paid Sick Leave.
- h. *Employer Offsets and Exhaustion of Benefits.* To the extent an Employee had at least eighty (80) hours of accrued paid sick leave benefits as of the date of Ordinance No. 6320 or at least one hundred sixty (160) hours of a combination of paid sick leave, vacation and PTO paid time off benefits ("Accrued Leave Benefits"), the obligation to provide Supplemental Paid Sick Leave under this Ordinance shall be deemed to be satisfied. To the extent accrued paid sick leave benefits afforded Employees as of the date of Ordinance No. 6320 were less than eighty (80) hours, or Accrued Leave Benefits were less than one hundred sixty (160) hours, an Employer is required to furnish Supplemental Paid Sick Leave to the extent of such deficiency. An Employer may credit the total COVID-19 paid sick leave hours already furnished to an Employee under the FFCRA, AB

1867, Cal/OSHA regulations, and/or Ordinance No. 6320, as well as any substantially similar State or Federal COVID-19 paid sick leave legislation that may be enacted in the future, against the Supplemental Paid Sick Leave obligations required by this Ordinance.

- i. *Enforcement.* An Employee claiming a violation of this Ordinance may bring an action in Superior Court of the State of California against an Employer and may be awarded: (1) reinstatement to the position the Employee was discharged in violation of this Ordinance; (2) back pay and Supplemental Paid Sick Leave unlawfully withheld, calculated at the Employee's average rate of pay; and/or (3) such other legal or equitable relief the Court may deem appropriate. If an Employee is the prevailing party in any legal action taken pursuant to this Ordinance, the Court may award reasonable attorney's fees and costs as part of the Employee's recovery. This Ordinance does not create a legally enforceable right by any member of the public against the County of Sonoma.
- j. *Retaliatory Action Prohibited.* No Employer shall discharge, reduce in compensation, or otherwise discriminate against any Employee for opposing any practice proscribed by this Ordinance, for requesting to use or actually using Supplemental Paid Sick Leave under this Ordinance, for participating in proceedings related to this Ordinance, for seeking to enforce his or her rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.
- k. *Notice and Recordkeeping Requirements.* Employers must within three (3) days of publication of this Ordinance provide notice to Employees of their rights under this Ordinance in a manner calculated to reach all employees, including posting a notice in both English and Spanish in the workplace, on any intranet or app-based platform and/or via email. Each Employer shall also maintain a record of each Employee's name, the hours worked, and pay rate for at least a three-year period.
- l. *Preemption and Severability.* Nothing in this Ordinance shall be interpreted or applied to create any power or duty in conflict with any federal or State law. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

- m. *No Waiver of Rights.* Any prospective waiver by an Employee of any or all of the provisions of this Ordinance shall be deemed contrary to public policy and shall be void and unenforceable.
- n. *Other Legal Requirements.* This Ordinance provides minimum requirements pertaining to public health emergency leave, and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by Employees of public health emergency sick leave, whether paid or unpaid, or that extends other protections to Employees.

This Ordinance will be published once before the expiration of 15 days after its passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced and passed on the 9th day of February, on regular roll call of the members of said Board by the following vote:

Supervisors:

Gorin: Rabbitt: Coursey: Gore: Hopkins:

Ayes:

Noes:

Absent:

Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors

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