Legislation Text

File #: 2021-0035, **Version:** 1

To: Board of Supervisors
Department or Agency Name(s): Board of Supervisors
Staff Name and Phone Number: Tambra Curtis, Deputy County Counsel, 707-565-2421
Vote Requirement: 4/5th
Supervisorial District(s): Countywide

Title:
Potential Extension of Urgency Paid Sick Leave Ordinance

Recommended Action:
Adopt an Extension of the local Urgency Paid Sick Leave Ordinance that requires certain private employers within the unincorporated territory of the County to provide paid sick-leave benefits to employees during the COVID-19 public health emergency with direction regarding the new extension date.

Executive Summary:
This item requests your Board to determine whether to extend the Urgency Paid Sick Leave Ordinance No. 6320 ("the Ordinance" or "Ordinance No. 6320") that the Board adopted last August, and if so, through what date. The Ordinance requires that private employers with over 500 employees, including health care workers and first responders, afford employees with up to eighty (80) hours of paid sick leave benefits for the various COVID-19 reasons specified in the Ordinance. This Ordinance ran concurrently with the Families First Coronavirus Response Act ("the FFCRA"), which expired on December 31, 2020.

Discussion:
Background of COVID-19 State, Federal, and Local Paid Sick Leave Benefits

On January 31, 2020, the United States Health and Human Service 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, due to COVID-19. 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. C19-03 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, in an attempt to further mitigate the spread of the virus. To date, the County of Sonoma remains in the purple tier.

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response 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 provided 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 also required that employers with fewer than 500 employees provide up to an additional 10 weeks of paid expanded emergency family and medical leave for employees who are unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. The FFCRA exempted employers with 500 or more employees, and also allowed employers of health care workers and first responders to potentially exclude such employees based on operational needs.

The FFCRA afforded private employers who provided 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 unable to avail themselves of any tax credits, so the cost of the leave is borne entirely by the employer.

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 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.

On August 18, 2020, your 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.

On September 9, 2020, Governor Newsom signed Assembly Bill 1867, which required private employers with 500 or more employees to provide COVID-19 related supplemental paid sick leave to their employees. AB 1867 expired December 31, 2020. It is not currently known whether this legislation will be extended.

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.

Continued Need for Paid Sick Leave Benefits Afforded by the Ordinance

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. The spread of

COVID-19, if left unchecked, could quickly overwhelm our health care system and lead to catastrophic outcomes.

The mandatory provisions of the FFCRA expired December 31, 2020. However, covered employers who voluntarily elect to provide the leave benefits are entitled to a tax credit through March 21, 2021. In addition, President Biden recently announced in the American Rescue Plan a COVID sick leave benefits package that is similar to the FFCRA, but would close the FFCRA loopholes for small and large private companies, as well as health care workers and first responders, and would cover all employees. Additional improvements include increased monetary benefit caps, and more than fourteen weeks of paid COVID-19 sick and family and medical leave that would be good through September 30, 2021. The proposal also includes broader eligibility for the federal tax credits than under the FFCRA.

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. Thus, there is a need to continue the local paid sick leave ordinance until such time as the federal legislation is passed.

The Centers for Disease Control ("CDC") reported that as of December 31, 2020, the total number of U.S. COVID-19 cases had surpassed 19 million, with over 337,000 deaths nationwide. The daily case count in both the United States, as well as the County, continues to grow with alarming speed.

The American College of Occupational and Environmental Medicine has stated that paid sick leave is recommended to help 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. 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. Moreover, in the absence of paid sick leave, many workers will have no option other than to send their children to childcare providers when those children should be quarantining or isolating themselves at home, thereby posing a significant public health risk. If the Ordinance is not extended, the impacts are anticipated to be felt most by the County's Latinx population.

Given the current and anticipated growth in the number of COVID-19 cases heading into 2021, employees' need for supplemental paid sick leave will extend into 2021.

An extension of the expiration of Ordinance No. 6320 so as to allow covered employees to continue to use accrued, unused supplemental paid sick leave benefits for an additional period of time would address the County's local health emergency in several regards by:

(1) Assisting covered 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, exhibiting symptoms related to COVID-19, or caring for an individual affected by COVID-19. By extending the deadline for employees to access supplemental paid sick leave benefits during the current crisis, this Ordinance will reduce 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 help alleviate the difficult decision of such employees having to choose between receiving a paycheck or minimizing the risk of the spread of COVID-19, and will thus serve to decrease the spread of COVID-19 through interactions with fellow employees or members of the public; and

(2) Making it more likely that covered employees will be able to care for their family and household members whose schools, child care and elder care facilities are closed.

Current Status and Direction Needed

Of the handful of jurisdictions that enacted paid sick leave ordinances in the first place, a majority have elected to adopt urgency ordinances extending the expiration of their local ordinances. Most jurisdictions have chosen either March 31, 2021 or June 30, 2021 as the extension date. The new urgency ordinances simply continue the obligation to provide COVID-related leave benefits when needed, to the extent an employee has not already exhausted their leave accruals; the extensions do not require that employers provide new banks of leave.

Direction is needed from your Board whether you Board wishes to extend the Ordinance, and if so, through what date.

Given the dire circumstances created by the coronavirus and impacts on businesses and employees, the new ordinance extending the expiration date of Ordinance No. 6320 would be an urgency ordinance that could 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, your Board directed County Counsel to bring forward an urgency paid sick leave ordinance that incorporated the policy direction provided by the Board.

August 18, 2020, your Board Adopted Urgency Paid Sick Leave Ordinance 6320.

January 5, 2021, your Board gave direction to County Counsel to bring forward an urgency ordinance that would extend the expiration deadline of Ordinance No. 6320, for further consideration by the Board.

FISCAL SUMMARY

Expenditures	**FY 20-21 Adopted**	**FY21-22 Projected**	**FY 22-23 Projected**

Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:
There are no financial impacts to the County if the expiration date of the Ordinance is extended; only financial impacts to those private employers in the County who would be subject to the ordinance.

Staffing Impacts:			
Position Title (Payroll Classification)	**Monthly Salary Range (A-I Step)**	**Additions (Number)**	**Deletions (Number)**

Narrative Explanation of Staffing Impacts (If Required):
N/A

Attachments:
Draft Urgency Ordinance Amending the County's Urgency COVID-19 Paid Sick Leave.

Related Items "On File" with the Clerk of the Board:
Ordinance (Ordinance No. 6320)