



Legislation Text

File #: 2021-0075, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Tambra Curtis, 707-565-2421

Vote Requirement: 4/5th

Supervisorial District(s): Countywide

Title:

Adoption of Local COVID-19 Paid Sick Leave Ordinance Applicable to all Employees in the Unincorporated Areas of the County

Recommended Action:

Introduce, waive reading of, and adopt an Urgency Ordinance to enact a Local COVID-19 Paid Sick Leave Ordinance Applicable to all Employees in the Unincorporated Areas of the County which will supersede Ordinance No. 6320 (4/5th Vote Required)

Executive Summary:

On August 18, 2020, your Board adopted the Urgency Paid Sick Leave Ordinance No. 6320 (“the Ordinance” or “Ordinance No. 6320”), which required 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. The Ordinance addressed gaps in coverage and ran concurrently with the Families First Coronavirus Response Act (“the FFCRA”), which expired on December 31, 2020. On January 26, 2021, your Board adopted the extension of Ordinance No. 6320 through June 30, 2021, and directed County Counsel to draft a new ordinance that would provide supplemental paid sick leave to all employees within the unincorporated areas of the County, including those previously covered by the now-expired FFCRA.

This new paid sick leave Ordinance will expand paid sick leave coverage locally by requiring all employers in the unincorporated areas of the County to allow their employees to use the previously required (under either the FFCRA or the local ordinance) up to 80 hours of paid leave benefits (pro-rated for part-time employees) for various COVID-19 sick purposes and/or for the care of 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.

Employees will be able to utilize the leave benefits to the extent they have not already exhausted their COVID-19 paid sick leave accruals during the pandemic (i.e. employees will not be afforded a new bucket of leave hours). This Ordinance will become effective upon a 4/5 vote from the Board of Supervisors, and will sunset on June 30, 2021.

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. Ensuing Orders have since been issued, and the County of Sonoma remains in the purple tier.

On March 18, 2020, then-President Trump signed into law the Families First Coronavirus Response Act (“FFCRA”) to provide emergency paid sick leave to certain employees of employers with fewer than 500 employees who are unable to work or telework due to the COVID-19 public health emergency. 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.

On August 18, 2020, your Board enacted Ordinance No. 6320, which addressed the emergency paid leave coverage gap created by the FFCRA 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.

Separately, on January 5, 2021, your Board approved Extension of Leave Benefits Provided by the Families First Coronavirus Response Act and Additional COVID-19 Leave Programs for County Employees through March 31, 2021

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 mandatory provisions of the FFCRA expired, resulting in employers no longer being legally required to provide employees with the required paid sick leave benefits. Employers may voluntarily elect to provide the leave benefits, and those who do are entitled to a tax credit through March 21, 2021. Further, 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.

Ordinance No. 6320, which required that private employers with over 500 employees afford employees with up to eighty (80) hours of paid sick leave benefits for the various COVID-19 reasons as specified in the

Ordinance, ran concurrently with the FFCRA, and therefore expired on December 31, 2020. On January 26, 2021, your Board extended Ordinance No. 6320 through June 30, 2021. Your Board also provided direction that this new Ordinance be adopted to expand paid sick leave coverage to all employees in the unincorporated areas of the County in an effort to close the coverage gap created by the expiration of the FFCRA, and encourage employees who are either experiencing symptoms of COVID-19, sick with COVID-19, or having to care for a family member with COVID-19, to stay at home.

Need for Expanded Paid Sick Leave Coverage Benefits Afforded by this Ordinance

COVID-19 cases continue to ravage our community, our State, and our Nation. In an effort to slow the spread of COVID-19 and to increase ICU capacity, on December 3, 2020, Governor Newsom announced a Regional Stay at Home Order to go into effect when ICU capacity reached below 15% in any given region. The Bay Area Region, which includes Sonoma County, was placed on the Regional Stay Home Order from December 17, 2020 to January 25, 2021. While the Regional Stay Home Order has been lifted, Sonoma County continues to be in the most restrictive tier of Governor Newsom’s Blueprint for a Safer Economy, with the current risk level for COVID-19 in the community as “widespread.”

The Centers for Disease Control (“CDC”) reported that as of January 21, 2021, the total number of U.S. COVID-19 cases had 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.

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 adopted, the impacts are anticipated to be felt most by the County’s Latinx population.

While it is hopeful that a new federal sick leave benefits package will be signed into law as part of President Biden’s American Recue Plan, local action is needed now to close the gaps created by the expiration of 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. This new ordinance will close the gap created by the expiration of the FFCRA, by providing all employees in the unincorporated areas of the County with the ability to use up to 80 hours of paid leave benefits (pro-rated for part-time employees) for various COVID-19 sick purposes and/or for the care of 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. Employees will be able to utilize the leave benefits to the extent they have not already exhausted their COVID-19 paid sick leave accruals during the pandemic. (I.e. employees will not be afforded a new bucket of leave hours.)

Further, this ordinance will 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 allowing 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.

Scope of the Ordinance

The scope of the ordinance will be as follows:

- **Employees covered:** The ordinance will extend to all employees in the unincorporated areas of the County.
- **Pay Cap:** Pay is capped at \$511 per day, and \$5,110 in the aggregate, regardless of the reason for the leave.
- **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. In addition, to the extent an employee has already taken more than eighty (80) hours of COVID-19 paid sick leave during the pandemic, the employer of such employee shall be deemed to have satisfied its obligations under this ordinance.

- **Hardship Exemption:** The ordinance will have a 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.
- **Health Care Providers and Emergency Responder Exemptions:** There is no exemption from coverage for the sick leave benefits for health care providers and emergency responders; there is only a potential exemption for such workers due to operational needs when the benefit is being sought 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.
- **Posting of Notice:** Employers must provide notice to employees of their rights under the ordinance by posting a notice in English and Spanish in the workplace, on any intranet or app-based platform or via email. The County has drafted a sample notice in both English and Spanish that employers may post.

It is recommended that your Board 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. The Ordinance will repeal and supersede Ordinance No. 6320, and will sunset on June 30, 2021.

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.

January 5, 2021 - Your Board approved Extension of Leave Benefits Provided by the Families First Coronavirus Response Act and Additional COVID-19 Leave Programs for County Employees through March 31, 2021.

January 26, 2021 - Your Board adopted the extension of Ordinance No. 6320 and directed County Counsel to draft a new ordinance that would provide supplemental paid sick leave to all employees within the unincorporated areas.

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; the ordinance only potentially financial impacts those private employers in the unincorporated areas of the County who are 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 Adopting Local COVID-19 Paid Sick Leave Ordinance Applicable to all Employees in the Unincorporated Areas of the County
- COVID-19 Paid Sick Leave Posting Notice in English and Spanish

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

- Ordinance (Ordinance No. 6320)
- August 18, 2020 Board Summary Report on Adoption of an Urgency Paid Sick Leave Ordinance
- January 26, 2021 Board Summary Report on Adopting an Extension of Ordinance 6320