



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-22
REVISED

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

PRINCIPAL DEPUTIES

Gary J. Anderson
Charles M. Gale
Anne C. Lattime
Howard D. Russell

May 19, 2020

DEPUTIES

David R. Albers
C. Geoffrey Allred
Taylor M. Anderson
Richard F. Anthony
William R. Baerg
Sarah E. Green
Monica J. Kilaita
Nicholas J. Masero
Dawn A. McIntosh
Lauren E. Misajon
Matthew M. Peters
Katrinn R. Pickett
Arturo D. Sanchez
Chelsea N. Trotter
Todd Vigus
Amy R. Webber
Erin Weesner-McKinley
Theodore B. Zinger

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 8.110, relating to COVID-19 paid supplemental sick leave; declaring the urgency thereof to make the ordinance effective immediately as an emergency measure; and read the first time and lay over to the next regular meeting of the City Council for final reading for regular ordinance. (Citywide).

DISCUSSION


Pursuant to your request on May 12, 2020, this ordinance has been amended to include an exemption for employers that have a paid leave or paid time off policy that provides a minimum of one hundred and sixty (160) hours of paid leave annually. The amended ordinance is submitted for your consideration.

SUGGESTED ACTION

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By 
ERIN M. WEESNER-MCKINLEY
Deputy City Attorney

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 8.110 RELATING TO COVID-19 PAID SUPPLEMENTAL SICK LEAVE; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19 (also known as the "Coronavirus"); and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) in California based on the threats to public health caused by COVID-19; and

WHEREAS, on March 4, 2020, after deep concern by the World Health Organization and the Federal government, and as a result of the need to proactively slow the spread of, and combat, COVID-19 in the City of Long Beach, the City Public Health Officer issued a Declaration of Local Health Emergency and the Acting City Manager issued a Proclamation of Local Emergency; and

WHEREAS, on March 10, 2020, the City Council of the City of Long Beach recognized that an emergency did exist and unanimously passed a Resolution ratifying the City Manager's Proclamation of a Local Emergency and the Public Health Officer's Declaration of Local Health Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States of

1 America declared a National Emergency as a result of COVID-19; and

2 WHEREAS, on March 19, 2020, the Governor of the State of California
3 issued an Order (Executive Order N-33-20) that all individuals living in California stay
4 home or at their place of residence, except as needed to maintain continuity of operations
5 for certain critical infrastructure sectors, to protect the public health of Californians, to
6 mitigate the impact of COVID-19, and to ensure the healthcare delivery system is
7 capable of serving all; and

8 WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-
9 19 within the City, the Long Beach Health Officer issued the "Safer at Home" Order to
10 control the affects and spread of COVID-19; and

11 WHEREAS, on April 1, 2020, the Emergency Paid Sick Leave Act (enacted
12 as part of the Families First Coronavirus Response Act (H.R.6201)) became effective and
13 mandates that certain employers provide their employees with paid sick leave to be used
14 for any of the following COVID-19 related reasons:

- 15 • The employee is subject to quarantine or isolation by federal, state or local
16 order due to COVID-19, or is caring for someone who is quarantined or
17 isolated;
- 18 • The employee is advised by a health-care provider to self-quarantine as a
19 result of COVID-19 or is caring for someone who is so advised by a health-care
20 provider;
- 21 • The employee is experiencing symptoms of COVID-19 and is seeking medical
22 diagnosis; or
- 23 • The employee is caring for a minor child because of the child's school, daycare
24 or childcare provider is closed or unavailable as a result of COVID-19 and the
25 employee is unable to secure an alternative reasonable caregiver; and

26 WHEREAS, the federal Emergency Paid Sick Leave Act mandates eighty
27 (80) hours of paid sick leave for full-time employees and a proportional provision of paid
28 sick leave hours to part-time employees calculated by taking the average number of

1 hours an employee works over a two (2) week period; and

2 WHEREAS, the federal Emergency Paid Sick Leave Act requires sick leave
3 to be available immediately regardless of the length of an employee's employment; and

4 WHEREAS, the sick leave requirements of the federal Emergency Paid
5 Sick Leave Act do not apply to employers with more than five hundred (500) employees,
6 leaving their employees without the critical protections included in the federal Emergency
7 Paid Sick Leave Act; and

8 WHEREAS, given the extraordinary health and economic threats caused by
9 COVID-19 and the need to ensure public health and safety and fair employment practices
10 during the COVID-19 pandemic the City Council is compelled to act by addressing the
11 gap created by the federal Emergency Paid Sick Leave Act by extending paid leave to
12 employees in the City who are employed by businesses with five hundred (500) or more
13 employees;

14 NOW, THEREFORE, The City Council of the City of Long Beach ordains as
15 follows:

16
17 Section 1. Chapter 8.110 is added to the Long Beach Municipal Code to
18 read as follows:

19 CHAPTER 8.110

20 COVID-19 PAID SUPPLEMENTAL SICK LEAVE

21

22 8.110.010 Purpose.

23 As a result of the COVID-19 pandemic and the "Stay at Home" order
24 issued by California Governor Gavin Newsom and the "Safer at Home"
25 order issued by the City of Long Beach, both of which were issued to protect
26 the public health and welfare, many workers in the City of Long Beach are
27 facing significant job, health and economic insecurity. To ensure public
28 health and safety and fair employment practices during the economic

1 upheaval resulting from the COVID-19 pandemic, the City Council is
2 compelled to enact this Chapter, which sets forth paid supplemental sick
3 leave requirements for employers not covered by the federal Emergency
4 Paid Sick Leave Act. By extending supplemental paid sick leave to
5 employees not protected by the federal Emergency Paid Sick Leave Act,
6 this Chapter makes it more likely that those employees will be able to care
7 for themselves and their loved ones and ensure that they and their loved
8 ones stay home, and thereby minimize the spread of COVID-19 in the
9 community. This Chapter also addresses the current financial crisis of those
10 employees in Long Beach not protected by the federal Emergency Paid Sick
11 Leave Act who are struggling financially due to widespread closures, lack of
12 access to childcare and elder care, and other workplace disruptions, which
13 are likely to continue to affect employees after the expiration of the
14 Governor's "Stay at Home" order and the City of Long Beach's "Safer at
15 Home" order.

16
17 8.110.020 Definitions.

18 For purposes of this Chapter, the following words, whether used in
19 the singular or plural, have the following meanings:

20 A. "City" means the City of Long Beach.

21 B. "Employee" means an individual employed by an Employer
22 (as defined below) and who performs any work within the geographic
23 boundaries of the City of Long Beach for such Employer, provided as
24 follows:

25 1. The determination of employee status in the
26 construction industry will be made in accordance with Section 245.5(a)(2) of
27 the California Labor Code.

28 2. The determination of employee status for all other

1 businesses will be made in accordance with Section 2750.3 of the
2 California Labor Code.

3 C. "Employer" means a person, as defined in Section 18 of the
4 California Labor Code, including a corporate officer or executive, who
5 directly or indirectly, or through an agent or any other person, including
6 through the services of a temporary service or staffing agency or similar
7 entity, employs or exercises control over the wages, hours or working
8 conditions of any Employee.

9 D. "Federal Emergency Paid Sick Leave Act" means the federal
10 Emergency Paid Sick Leave Act enacted as part of the Families First
11 Coronavirus Response Act (H.R.6201) which became effective on April 1,
12 2020.

13 E. "Person" means a person, association, organization,
14 partnership, business trust, limited liability company or corporation.

15
16 8.110.030 Covered employers.

17 This Chapter applies to Employers with five hundred (500) or more
18 employees nationally that are not required, in whole or in part, to provide
19 paid sick leave benefits under the Federal Emergency Paid Sick Leave Act.

20
21 8.110.040 Supplemental sick leave requirement.

22 Employers subject to this Chapter under Section 8.110.030 must
23 provide the paid supplemental sick leave benefit described in this Chapter to
24 its Employees. This benefit is effective immediately on the effective date of
25 this Chapter.

26
27 8.110.050 Supplemental sick leave hours.

28 A. A fulltime Employee is entitled to eighty (80) hours of paid

1 supplemental sick leave. These hours shall be available on the effective
2 date of this Chapter.

3 B. A part-time Employee is entitled to paid supplemental sick
4 leave hours equal to the number of hours an Employee works on average
5 over a two (2) week period. These hours shall be available on the effective
6 date of this Chapter.

7

8 8.110.060 Scope of benefit.

9 Supplemental paid sick leave hours are subject to the requirements
10 set forth in this Section 8.110.060.

11 A. An Employee can use paid supplemental sick leave for any of
12 the following purposes:

13 1. The Employee is subject to quarantine or isolation by
14 federal, state or local order due to COVID-19, or is caring for someone who
15 is quarantined or isolated due to COVID-19;

16 2. The Employee is advised by a health-care provider to
17 self-quarantine due to COVID-19 or is caring for someone who is so
18 advised by a health-care provider;

19 3. The Employee experiences symptoms of COVID-19
20 and is seeking medical diagnosis;

21 4. The Employee is caring for a minor child because the
22 child's school, daycare, or childcare provider is closed or unavailable
23 because of COVID-19 and the Employee is unable to secure a reasonable
24 alternative caregiver.

25 B. The Employer shall pay the Employee for properly used
26 supplemental sick leave at the Employee's regular rate of pay up to Five
27 Hundred Eleven Dollars (\$511.00) per day and not to exceed an aggregate
28 of Five Thousand One Hundred Ten Dollars (\$5,110.00). Notwithstanding

1 the foregoing, the Employer may pay an Employee using supplemental sick
2 leave for a purpose identified in Section 8.110.060(A)(1-4) that relates to
3 care for another person at two-thirds of the employees' regular rate of pay
4 up to Two Hundred Dollars (\$200.00) per day and not to exceed an
5 aggregate of Two Thousand Dollars (\$2,000.00).

6 C. For a part-time Employee, the Employer will calculate the
7 amount of paid supplemental sick leave used based on the average number
8 of hours the employee worked per day during the six (6) months
9 immediately preceding the effective date of this Chapter. If an Employee
10 has worked for the Employer for less than six (6) months, then the
11 Employer shall calculate the amount of paid supplemental sick leave an
12 Employee is entitled to based on the average hours the Employer expected
13 the Employee to work per day at time of hire.

14 D. An Employer may not change any paid time off policies on or
15 after the effective date of this Chapter except to provide additional paid
16 leave.

17 E. An Employer shall not require an Employee to find a
18 replacement as a condition of approving the paid supplemental sick leave.

19 F. An Employer may require an Employee to identify the basis
20 for requesting paid supplemental sick leave but shall not require a doctor's
21 note or other documentation for the use of paid supplemental sick leave.

22 G. An Employer may require the Employee to follow reasonable
23 notice procedures in order to use the paid supplemental sick leave, but only
24 when the need for the paid supplemental sick leave is foreseeable.

25 H. Employees are not required to exhaust their sick leave or
26 other accrued leave prior to use of the paid supplemental sick leave hours.

27 I. An Employee is not entitled, under any circumstances, to be
28 paid for unused paid supplemental sick leave. Unused paid supplemental

1 sick leave will not be available after the sunset of this Chapter and
2 thereafter shall cease to exist unless an Employer extends an Employee's
3 access to such leave.

4 J. Upon an Employee's separation from employment, an
5 Employer is no longer obligated to provide or pay for any paid supplemental
6 sick leave not used prior to separation.

7 K. This Chapter provides minimum requirements pertaining to
8 paid supplemental sick leave and shall not be construed to prevent an
9 Employer from providing or advancing additional paid time off to an
10 Employee and shall not be construed to limit the amount of paid time off
11 that may be provided to an Employee.

12
13 8.110.070 Exemptions.

14 A. Employee able to work from home. Nothing in this Chapter is
15 intended to require the provision of paid supplemental sick leave to
16 Employees that can work from home and are healthy enough to do so.

17 B. Health Care Providers. Employers may exclude Employees
18 that are "health care providers" from the requirements of this Chapter. For
19 purposes of this Section, "health care providers" includes any individual
20 who is capable of providing health care services necessary to combat the
21 COVID-19 public health emergency. To minimize the spread of COVID-19,
22 Employers are encouraged to be judicious when using this definition to
23 exempt "health care providers" from the provisions of this Chapter.

24 C. Emergency Responders. Employers may exclude Employees
25 that are "emergency responders" from the requirements of this Chapter.
26 For purposes of this Section, "emergency responders" includes those
27 categories of Employees who: (1) interact with and aid individuals with
28 physical or mental health issues, including those who are or may be

1 suffering from COVID-19; (2) ensure the welfare and safety of the Long
2 Beach Community; (3) have specialized training relevant to emergency
3 response; and (4) provide essential services relevant to people’s health and
4 well-being. To minimize the spread of COVID-19, Employers are
5 encouraged to be judicious when using this definition to exempt
6 “emergency responders” from the provisions of this Chapter.

7 D. Government. This Chapter does not apply to employees of
8 government agencies working within the course and scope of their public
9 service employment.

10 E. Generous Leave. If an Employer has a paid leave or paid
11 time off policy that provides a minimum of one hundred and sixty (160)
12 hours of paid leave annually, the Employer is exempt from any obligation to
13 provide paid supplemental sick leave pursuant to this Chapter for the
14 Employee that received the more generous paid leave.

15
16 8.110.080 Employer offset.

17 An Employer’s obligation to provide paid supplemental sick leave
18 benefits under this Chapter shall be reduced for every hour an Employer
19 provided an Employee with paid leave in an amount equal to or greater than
20 the requirements in Section 8.110.060, not including previously accrued
21 hours, on or after March 4, 2020, for any of the purposes described in
22 Section 8.110.060(A)(1-4) or in response to an Employee’s inability to work
23 due to COVID-19.

24
25 8.110.090 Enforcement.

26 An Employee claiming a violation of this Chapter may bring a private
27 right of action in the Superior Court of the State of California against an
28 Employer and be awarded:

1 A. All actual damages (including, but not limited to, back pay and
2 provision of the supplemental paid sick leave unlawfully withheld) suffered
3 by the Employee.

4 B. Punitive damages, pursuant to California Civil Code Section
5 3294.

6 C. Reinstatement to the position the Employee was discharged
7 from in violation of this Chapter.

8 D. Reasonable attorney's fees and costs, as determined by the
9 court, if the Employee is the prevailing party in the action.

10 E. Any other legal or equitable relief the court may deem just and
11 appropriate.

12
13 8.110.100 Retaliatory action is prohibited.

14 No Employer shall discharge, reduce in compensation or otherwise
15 discriminate against any Employee for opposing any practice proscribed by
16 this Chapter, for requesting to use or actually using paid supplemental sick
17 leave under this Chapter, for participating in proceedings related to this
18 Chapter, for seeking to enforce their rights under this Chapter by any lawful
19 means, or for otherwise asserting rights under this Chapter.

20
21 8.110.110 Exemption for collective bargaining agreement.

22 A collective bargaining agreement in place on the effective date of
23 this Chapter may supersede the provisions of this Chapter if it contains
24 COVID-19 related sick leave provisions. When the collective bargaining
25 agreement expires or is otherwise open for renegotiation, the provisions of
26 this Chapter may only be expressly waived if the wavier explicitly states that
27 Employees are waiving the benefits they are legally entitled to pursuant to
28 the City of Long Beach's COVID-19 Paid Supplemental Sick Leave

1 Ordinance. If a collective bargaining agreement is in place on the effective
2 date of this Chapter but the agreement does not address COVID-19 related
3 sick leave provisions, the Employer shall comply with this Chapter unless
4 and until the agreement is amended to expressly waive in clear and
5 unambiguous terms set forth in the agreement as described above.
6

7 8.110.120 No waiver of rights.

8 Except for a collective bargaining agreement provision made
9 pursuant to Section 8.110.110, any waiver by an Employee of any or all of
10 the provisions of this Chapter shall be deemed contrary to public policy and
11 shall be void and unenforceable.
12

13 8.110.130 Expiration of Chapter.

14 Following adoption of this Chapter, and every ninety (90) days
15 thereafter, the City Manager shall report back to the City Council and Mayor
16 on the effectiveness of the provisions of this Chapter and whether the
17 provisions of this Chapter are still necessary based on the City's recovery
18 from the health and economic impacts of the COVID-19 pandemic. The City
19 Council will determine the sunset date of this Chapter based on relevant
20 information contained in the ninety (90) day reports.
21

22 8.110.140 Coexistence with other available relief for specific deprivations of
23 protected rights.

24 Except for the rights and remedies provided to employees pursuant
25 to the Federal Emergency Paid Sick Leave Act and California Governor's
26 Executive Order N-51-20, the provisions of this Chapter are in addition to
27 and/or independent of any other rights, remedies, or procedures available
28 under any other law and do not diminish, alter, or negate any other legal

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rights, remedies, or procedures available to an Employee.

8.110.150 Conflicts.

Nothing in this Chapter shall be interpreted or applied to create any power or duty in conflict with any federal or state law.

8.110.160 Severability.

If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 2. This is an emergency measure and is urgently required for the reasons identified in Section 8.110.010. On that basis this ordinance shall be passed as an emergency measure, to take effect immediately.

Section 3. Pursuant to Section 211 of the City Charter, this ordinance is an emergency ordinance duly adopted by the City Council by a vote of five (5) of its members and shall take effect immediately. The City Clerk shall certify to a separate roll call and vote on the question of the emergency of this ordinance and to its passage by the vote of five (5) members of the City Council of the City of Long Beach, and cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and it shall thereupon take effect and shall be operative immediately.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Lona Beach, CA 90802-4664

1 Section 4. This ordinance shall also be adopted by the City Council as a
2 regular ordinance, to the end that in the event of any defect or invalidity in connection
3 with the adoption of this ordinance as an emergency ordinance, the same shall,
4 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
5 the Mayor. The City Clerk shall certify to the passage of this ordinance by the City
6 Council of the City of Long Beach and shall cause the same to be posted in three (3)
7 conspicuous places in the City of Long Beach.

8 I hereby certify that on a separate roll call and vote which was taken by the
9 City Council of the City of Long Beach upon the question of emergency of this ordinance
10 at its meeting of _____, 2020, the ordinance was declared to be an
11 emergency by the following vote:

12			
13	Ayes:	Councilmembers:	_____
14			_____
15			_____
16	Noes:	Councilmembers:	_____
17			_____
18	Absent:	Councilmembers:	_____
19			_____
20	Recusal(s):	Councilmembers:	_____
21			_____

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I further certify that thereafter, at the same meeting, upon a roll call and vote on adoption of the ordinance, it was adopted by the City Council of the City of Long Beach by the following vote:

Ayes:	Councilmembers:	_____

Noes:	Councilmembers:	_____

Absent:	Councilmembers:	_____

Recusal(s):	Councilmembers:	_____

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I further certify that the foregoing ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of _____, 2020, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

Clerk

Approved: _____
(Date)

Mayor

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664