

ORDINANCE NO. 2020-0026

Adopted by the Sacramento City Council

June 30, 2020

An Ordinance Adding Chapter 5.160 to the Sacramento City Code, Relating to Worker Protection, Health, and Safety; and Declaring the Ordinance to be an Emergency Measure to Take Effect Immediately Upon Adoption

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 5.160 is hereby added to the Sacramento City Code, to read as follows:

CHAPTER 5.160 WORKER PROTECTION, HEALTH, AND SAFETY

Article I General Provisions.

5.160.010 Title.

This chapter shall be known and may be cited as the “Sacramento Worker Protection, Health, and Safety Act.”

5.160.020 Findings and purpose.

- A. COVID-19 is a pandemic threatening the health and safety of the City’s residents, as reflected by the various emergencies declared at the local, state, and national levels.
- B. Immediate efforts to limit the spread of the COVID-19 coronavirus are critical to protecting the health and safety of the City’s residents.
- C. As employees return to the workplace, it is critical to have a working environment that does not unnecessarily increase for them – and thus their co-workers and customers – their potential exposure to the COVID-19 coronavirus.
- D. This ordinance is necessary to mitigate the spread and effect of the COVID-19 coronavirus, to protect employees in the workplace, to ensure fair employment practices during the economic upheaval from the pandemic, and to reduce the demand on government-funded services. Any delay in its implementation is a threat to the health, safety, and welfare of workers and the public in general.
- E. Among the most effective ways to limit the spread of the COVID-19 coronavirus is to ensure that employees who are feeling sick or who are exposed to or caring for a family member who is suffering from COVID-19 do not go to work.

- F. Efforts to limit the spread of the COVID-19 coronavirus may be undermined if employees go to work sick because they are unable to risk losing income and do not have sick leave available to them.
- G. Any delay in making available paid sick leave benefits could result in the unnecessary spread of the COVID-19 coronavirus by employees to their co-workers or to the public who come in contact with them while they are working.

5.160.030 Definitions.

The following definitions apply in this chapter:

“Emergency Paid Sick Leave Act” or “EPSLA” means the federal Emergency Paid Sick Leave Act enacted as part of the Families First Coronavirus Response Act (H.R. 6201).

“Employee” means a person who works within the boundaries of the City of Sacramento for their employer and is an “employee” as defined by California Labor Code section 2750.3.

“Employer” means a person that operates a business in the City of Sacramento and who directly or indirectly employs or exercises control over the wages, hours, or working conditions of any employee.

“EPSLA-exempt employer” means an employer that is not required to provide paid sick leave to employees under the Emergency Paid Sick Leave Act, whether by the terms of Emergency Paid Sick Leave Act or by the employer’s exercise of an exemption under that Act.

“Face covering” means a material that covers the nose and mouth, consistent with the definition of a cloth face covering as defined by the California Department of Public Health in its June 18, 2020, Guidance for the Use of Face Coverings, as it may be amended.

“Family member” means any person for whom an employee may use paid sick leave pursuant to California Labor Code section 245.5, subdivision (c).

“Full-time employee” means an employee who works 40 hours or more per week for an employer, or who was classified as full-time by the employer before the effective date of this chapter.

“Part-time employee” means an employee who is not a full-time employee.

“SPSL” means the supplemental paid sick leave described in article II of this chapter.

“Telework” means work performed from an approved location other than the employer’s regular place of business.

5.160.040 Conditions on city financial assistance.

Any employer who receives financial assistance from the city through any program designed to provide financial assistance to businesses due to COVID-19 shall certify that the employer complies with this ordinance as a condition of receiving funds. An employer that is determined to have violated this chapter shall refund any such financial assistance it has received from the city.

5.160.050 Effect on other rights and guidance.

This chapter is not intended to revoke, repeal, or impair any employee rights, whether statutory, regulatory, or collectively-bargained. This chapter does not substitute for existing safety and health-related regulatory requirements, such as those of Cal/OSHA, the Centers for Disease Control, or any requirements of any Sacramento County health order, local order, gubernatorial executive order, or orders issued by the California Department of Public Health.

5.160.060 No waiver of rights.

No employer shall request an employee to waive a right under this chapter, and any waiver by an employee of any right under this chapter is deemed contrary to public policy and is void and unenforceable.

5.160.070 Retaliatory action prohibited.

No employer shall discharge, discipline, discriminate against, retaliate against, or reduce the compensation of any employee for seeking to exercise the employee's rights under this chapter by any lawful means; for participating in proceedings related to this chapter; or for refusing to come to work if that refusal is based on an alleged violation substantiated by the city under section 5.160.075.

5.160.075 Right to refuse work under certain circumstances.

An employee may refuse to work for an employer, without pay, for violations of section 5.160.200, under the following circumstances:

- A. The employee reasonably believes the employer is in violation of 5.160.200 and provides notice to the employer of the alleged violation.

- B. The city may investigate whether the employer was in violation of 5.156.200, as alleged by the employee. Within 15 days of written notice from the city, the employer shall cure any alleged violation that has been substantiated by the city.
- C. If the city after investigation finds the employer was not in violation of section 5.160.200, or if the employer provides proof to the city that it has cured any violation that has been substantiated, the employee no longer has the right of refusal as provided in this section.

5.160.080 Enforcement and remedies.

- A. Civil enforcement.
 - 1. Subject to subsection A.2, below, within 1 year of a violation an employee may bring an action in the Superior Court of the State of California against an employer for violations of section 5.160.070 and may be awarded:
 - a. All actual damages;
 - b. Punitive damages, pursuant to California Civil Code section 3294;
 - c. Reinstatement to the position the employee was discharged from in violation of this chapter;
 - d. Front and back pay for each day the violation continues, which shall be calculated at a rate of compensation not less than the higher of:
 - 1. The average regular rate of pay received by the employee during the last three years of their employment in the same occupation classification; or
 - 2. The most recent regular rate received by the employee while employed by the employer;
 - e. Reasonable attorneys' fees and costs; and
 - f. Other legal or equitable relief the court deems just and appropriate, including injunctive relief.
 - 2. An employee may commence an action only after the following requirements have been met:
 - a. The employee provides written notice to the employer of the provision of this chapter alleged to have been violated and all facts supporting the alleged violation; and
 - b. The employer is provided 15 days from receipt of that written notice to cure any alleged violation.

- B. City enforcement.
 - 1. A violation of this chapter is not subject to criminal sanctions, but is subject to enforcement under section 1.28.010.
 - 2. The city may file a civil action to recover any employer financial assistance due to the city pursuant to section 5.160.040.

5.160.090 Sunset.

- A. Except as provided in subsection B, this chapter has no effect after December 31, 2020. The city will evaluate the impacts and effects of this chapter within 90 days of its effective date.
- B. An employee may bring an action, or continue to pursue any of the remedies described in section 5.160.080, after December 31, 2020 if the alleged violation occurred before January 1, 2021.

5.160.100 Time for implementation.

The employer obligations set forth in this chapter take effect 15 days after the effective date of this chapter.

Article II Employer Safety Practices and Protocols.

5.160.200 Safety practices and protocols.

An employer shall implement, as applicable, the following physical-distancing, mitigation, and cleaning protocols and practices:

- A. Daily cleaning and disinfection of high-touch areas in accordance with guidelines issued by the Centers for Disease Control and Prevention.
- B. Maintenance of cleaning protocols established by the employer for all other areas of the employment site.
- C. Establish protocols for action upon discovery that the employment site has been exposed to a person who is a probable or confirmed case of COVID-19.
- D. Providing employees access to regular handwashing with soap, hand sanitizer, and disinfectant wipes.
- E. Cleaning of common areas – including break rooms, locker rooms, dining facilities, rest rooms, conference rooms, and training rooms – daily and between shifts.

- F. Providing face coverings for employees to wear during their time at the employment site, and mandating their wear while on the site, except to the extent an employee can maintain physical distance of six feet from other persons or is using break time to eat or drink, in accordance with the guidance from the Centers for Disease Control and Prevention. Employers shall establish protocols specifically regarding how it will ensure proper physical distancing.
- G. Informing all employees of the required protocols and practices in this section, in writing, in English and any language spoken by at least 10% of the employees who are at the work site.

5.160.210 Lesser obligations for certain off-site conditions.

For employees working at worksites that are not owned, maintained, leased, or controlled by their employer, the employer is not in violation of subsections A, B, or E of section 5.160.200 if the employer has taken steps to contact the entity that owns, maintains, leases, or controls that other worksite to encourage compliance with those provisions.

Article III Supplemental Paid Sick Leave.

5.160.300 Covered employers.

- A. This article applies only to EPSLA-exempt employers with 500 or more employees nationally.
- B. An EPSLA-exempt employer of an employee who is a health care provider or an emergency responder (as each term is defined in 29 C.F.R. § 826.30(c), as it may be amended) may exclude those employees from the requirements of this article.

5.160.310 Employer obligation to provide supplemental paid sick leave.

- A. An employer covered by this article shall provide to each employee the SPSL described in this article.
- B. SPSL is in addition to any other paid sick leave, paid time off, or vacation time that an employer currently provides to an employee by statute, policy, or collective bargaining agreement.
- C. Nothing in this article limits an employer from providing other or additional paid time off to an employee.

5.160.320 Supplemental paid sick leave hours.

- A. Full-time employees. A full-time employee is entitled to 80 hours of SPSL under this chapter.
- B. Part-time employees. A part-time employee is entitled to an amount of SPSL hours equal to the number of hours worked on average over a two-week period. In calculating this average, the employer shall use the number of hours worked by the employee for each week the employee worked during the six months immediately preceding the effective date of this chapter, multiplied by two.
- C. Employer offsets.
 - 1. If an employer has granted additional paid sick leave (beyond any paid sick leave, paid time off, or vacation time afforded an employee by statute, policy, or collective bargaining agreement) since March 19, 2020 specifically for use for COVID-19-related matters described in section 5.160.330.B, the employer may use those leave hours as a credit against the number of SPSL hours required by this section.
 - 2. If an employee is entitled to leave hours pursuant to the Governor's Executive Order N-51-20, the employer may use those leave hours as a credit against the number of SPSL hours required by this section.

5.160.330 Scope of benefit.

- A. The SPSL described in this article is subject to the requirements of this section.
- B. SPSL use. An employee who is unable to work or telework may use SPSL due to the following:
 - 1. The employee is subject to quarantine or isolation by federal, state, or local order due to COVID-19, or is caring for a family member who is quarantined or isolated due to COVID-19.
 - 2. The employee is advised by a health care provider to self-quarantine due to COVID-19 or is caring for a family member who is so advised by a health-care provider.
 - 3. The employee chooses to take off work because the employee is over the age of 65 years or is considered vulnerable due to a compromised immune system.
 - 4. The employee is off work because the employer it works for or specific work location temporarily ceases operation due to a public health order or other public official's recommendation.

5. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
 6. The employee is caring for a minor child because a school or daycare is closed due to COVID-19.
- C. Rate of SPSL pay; maximum monetary benefit.
1. Except as provided in subsections 2 and 3, below, an employer shall pay an employee for properly-used SPSL at the employee's regular rate of pay.
 2. Notwithstanding subsection 1, above, the maximum amount an employer is obligated to pay for SPSL is (a) \$511 per day, and (b) an aggregate of \$5,110 for the entire benefit.
 3. Notwithstanding subsections 1 and 2, above, for an employee who uses SPSL to care for a family member, the employer may pay two-thirds of the employee's regular rate of pay, with a maximum employer obligation of \$200 per day and an aggregate of \$2,000 for the entire benefit.
- D. Additional employer restrictions.
1. An employer may not require an employee to use other accrued paid sick leave, paid time off, or vacation time before using SPSL.
 2. An employer may not require an employee to find a replacement as a condition of using SPSL.
 3. An employer may not issue any discipline or attendance points based on a no-fault attendance policy for an employee's use of SPSL.
- E. Additional employee restrictions.
1. If requested by the employer, the employee shall provide the employer the basis for requesting SPSL; provided, however, that a doctor's note or other documentation is not required.
 2. An employer may require the employee to follow reasonable notice procedures before providing SPSL, but only when the employee's need for the SPSL is foreseeable.
- F. Unused SPSL. An employee is not entitled, under any circumstances, to be paid for unused SPSL. Unused SPSL expires when this chapter sunsets.

SECTION 2. Severability.

If any portion, section, subsection, paragraph, subparagraph, sentence, clause, or application of this ordinance is held invalid or inapplicable by a final judgment of a court of competent

jurisdiction, such decision shall not affect the validity or applicability of any other part of this ordinance. Consistent with the foregoing, the provisions and applications of this ordinance shall be deemed severable, and each portion, section, subsection, paragraph, subparagraph, sentence, clause, or application of this ordinance would have been enacted irrespective of the fact that one or more other parts or applications is found to be invalid or inapplicable.

SECTION 3. Emergency Declaration.

The City Council declares this ordinance to be an emergency measure, to take effect immediately upon its adoption pursuant to Sacramento City Charter section 32(g)(2). The facts constituting the emergency are set forth in Section 1, above.

Adopted by the City of Sacramento City Council on June 30, 2020, by the following vote:

Ayes: Members Ashby, Guerra, Hansen, Jennings, Schenirer, Warren and
Mayor Steinberg

Noes: Members Harris, Carr

Abstain: None

Absent: None

Attest: **Mindy Cuppy** Digitally signed by Mindy Cuppy
Date: 2020.07.08 14:40:59
-07'00'

Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

Passed for Publication: Not applicable
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