

ORDINANCE NO. _____

**AN URGENCY ORDINANCE RELATING TO WORKER PROTECTION,
HEALTH, AND SAFETY KNOWN AS THE “SACRAMENTO COUNTY WORKER
PROTECTION, HEALTH, AND SAFETY ACT OF 2020”**

The Board of Supervisors of the County of Sacramento, State of California,
ordains as follows:

SECTION 1. FINDINGS. The Board of Supervisors of the County of Sacramento
makes the following findings in support of the immediate adoption and application of this
urgency ordinance:

- A. COVID-19 is a pandemic threatening the health and safety of the County’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 County’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, customers and the public– 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.

SECTION 2. GENERAL PROVISIONS

A. 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 unincorporated area of the County 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 unincorporated area of the County 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 Section 4 of this ordinance.

"Telework" means work performed from an approved location other than the employer's regular place of business.

B. Conditions on County financial assistance.

Any employer who receives financial assistance from the County of Sacramento 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 County.

C. Effect on other rights and guidance.

This Ordinance is not intended to revoke, repeal, or impair any employee rights,

whether statutory, regulatory, or collectively-bargained. This Ordinance 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.

D. No waiver of rights.

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

E. 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 Ordinance 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 County subsection F, below.

F. Right to refuse work under certain circumstances.

An employee may refuse to work for an employer, without pay, for violations of Section 3.A. of this Ordinance, under the following circumstances:

1. The employee reasonably believes the employer is in violation of Section 3.A. and provides notice to the employer of the alleged violation.

2. The County may, but is not obligated to, investigate whether the employer was in violation of Section 3.A., as alleged by the employee. Within 15 days of written notice from the County, the employer shall cure any alleged violation that has been substantiated by the County.

3. If the County after investigation finds the employer was not in violation of Section 3.A., or if the employer provides proof to the County that it has cured any violation that has been substantiated, the employee no longer has the right of refusal as provided in this section.

G. Enforcement and remedies.

1. Civil enforcement. 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 2.E. "Retaliatory Actions Prohibited" 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 Ordinance;
- 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:
 - i. The average regular rate of pay received by the employee during the last three years of their employment in the same occupation classification; or
 - ii. 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.

An employee may commence an action only after the following requirements

have been met:

- i.. The employee provides written notice to the employer of the provision of this Ordinance alleged to have been violated and all facts supporting the alleged violation; and
 - ii. The employer is provided 15 days from receipt of that written notice to cure any alleged violation.
2. County enforcement.
- a. A violation of this Ordinance is not subject to criminal sanctions, but is subject to enforcement under Sacramento County Code Chapter 16.18.
 - b. The County may file a civil action to recover any employer financial assistance due to the county pursuant to Section 2.B..

H. Sunset.

1. Except as provided in subsection 2, this Ordinance has no effect after December 31, 2020.
2. An employee may bring an action, or continue to pursue any of the remedies described in Section 2.G., after December 31, 2020 if the alleged violation occurred before January 1, 2021.

I. Time for implementation.

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

SECTION 3. Employer Safety Practices and Protocols.

A. Safety practices and protocols.

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

1. Daily cleaning and disinfection of high-touch areas in accordance with guidelines issued by the Centers for Disease Control and Prevention.
2. Maintenance of cleaning protocols established by the employer for all other areas of the employment site.
3. 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.
4. Providing employees access to regular handwashing with soap, hand sanitizer, and disinfectant wipes.
5. Cleaning of common areas – including break rooms, locker rooms, dining facilities, rest rooms, conference rooms, and training rooms – daily and between shifts.
6. 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 at least 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.
7. 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.

B. 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 Section A 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.

SECTION 4. Supplemental Paid Sick Leave.

A. Covered employers.

1. This article applies only to EPSLA-exempt employers with 500 or more employees nationally.

2. 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.

B. Employer obligation to provide supplemental paid sick leave.

1. An employer covered by this article shall provide to each employee the SPSL described in this article.

2. 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.

3. Nothing in this article limits an employer from providing other or additional paid time off to an employee.

C. Supplemental paid sick leave hours.

1. Full-time employees. A full-time employee is entitled to 80 hours of SPSL under this chapter.

2. 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.

3. Employer offsets.

a. 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, the employer may use those leave hours as a credit against the number of SPSL hours required by this section.

b. 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.

D. Scope of benefit.

1. The SPSL described in this article is subject to the requirements of this section.

2. SPSL use. An employee who is unable to work or telework may use SPSL due to the following:

a. 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.

b. 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.

c. 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.

d. The employee is off work because the employer it works for temporarily ceases operation due to a public health order or other public official's recommendation.

e. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

f. The employee is caring for a minor child because a school or daycare is closed due to COVID-19.

3. Rate of SPSL pay; maximum monetary benefit.

a. Except as provided in subsections a and b, below, an employer shall pay an employee for properly-used SPSL at the employee's regular rate of pay.

b. Notwithstanding subsection a, 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.

c. Notwithstanding subsections a and b, 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.

4. Additional employer restrictions.

a. An employer may not require an employee to use other accrued paid sick leave, paid time off, or vacation time before using SPSL.

b. An employer may not require an employee to find a replacement as a condition of using SPSL.

c. An employer may not issue any discipline or attendance points based on a no-fault attendance policy for an employee's use of SPSL.

5. Additional employee restrictions.

a. 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.

b. 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.

6. Unused SPSL. An employee is not entitled, under any circumstances, to be paid for unused SPSL. Unused SPSL expires when this chapter sunsets.

SECTION 5. SEVERABILITY. If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable. The Board of Supervisors hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

SECTION 6. DECLARATION OF URGENCY. The Board of Supervisors finds and declares that this ordinance is required for the immediate protection of the public peace, health and safety for the following reasons: 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. Based upon the findings set forth in Section 1, this ordinance is declared to be an urgency ordinance that shall be effective immediately upon adoption by the Board of Supervisors.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be operative from the date of passage by the Board of Supervisors.

This ordinance shall take effect and be in full force on the date of its passage, and before the expiration of fifteen (15) days from the date of its passage, it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this ____ day of _____ 2020, by the following vote:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

RECUSAL: Supervisors,
(PER POLITICAL REFORM ACT (§ 18702.5.))

Chair of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk, Board of Supervisor