

Sweeney Mason

LLP

Coronavirus (COVID-19) Update:

San Jose Issues Paid Sick Leave Ordinance

As discussed in detail in our previous News Alerts, the recently enacted Families First Coronavirus Response Act (FFCRA) requires eligible employers to provide emergency paid sick leave and expanded family and medical leave to their employees for certain COVID-19-related reasons. Under the provisions of the FFCRA, employers with more than 500 employees are exempt and employers with fewer than 50 employees may apply for an exemption if the business can demonstrate that providing such leave would jeopardize the viability of the business going forward.

San Jose enacted a temporary local ordinance intended to fill the gap in coverage under the FFCRA by providing emergency paid sick leave to certain employees who are not otherwise covered by the FFCRA. The full text of the ordinance is available [here](#), and we encourage all businesses with operations in San Jose to review the ordinance carefully. The city has also issued an [FAQ page](#).

Under the ordinance, "covered employers" include those who are:

1. Subject to San Jose's business license tax or maintain a facility in San Jose, AND
2. Who are not required to provide FFCRA emergency paid sick leave because (1) the employer has 500 or more employees, (2) the employer has fewer than 50 employees and is covered by the FFCRA's small business exemption or (3) the employer employs healthcare providers or emergency responders and has opted to exclude such workers from application of the FFCRA.

Employers covered under the ordinance must now provide up to 80 hours of emergency paid sick leave to eligible employees. Eligible employees are those who have worked at least two

hours within the city of San Jose and leave their home to perform "Essential Work" as defined in Santa Clara County's amended Shelter-in-Place Order. Full time employees are eligible for the full 80 hours, while part time employees are eligible for paid sick leave equivalent to the average number of hours worked over a two-week period. This weekly average is calculated by using the hours the employee worked per week between October 8, 2019 and April 7, 2020 (a total of 26 weeks).

Eligible employees may use emergency paid sick leave for the following reasons:

1. The employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19;
2. The employee has been advised by a healthcare provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a healthcare provider;
3. The employee experiences symptoms of COVID-19 and is seeking medical diagnosis;
4. The employee is caring for a minor child because a school or daycare is closed due to COVID-19.

Emergency paid sick leave is available to covered employees for immediate use. Employers may not require an employee to find a replacement worker to cover the employee's missed work time as a condition of the employee's use of these paid benefits.

The calculations for leave are the same as provided by the FFCRA: eligible employees will receive emergency paid sick leave pay at their regular rate of pay, subject to a cap of \$511 per day and \$5,110 in the aggregate. If the employee takes emergency paid sick leave to care for another individual, the employee's rate of pay is reduced to 2/3 their regular rate, capped at \$200 per day and \$2,000 in the aggregate.

Emergency paid sick leave under the ordinance expires on December 31, 2020.

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no "one-size-fits-all" approach to COVID-19-related legal matters. For example, several Bay Area Cities impose their own emergency orders that mirror but in many cases are more stringent than the Statewide or County orders. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the

COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason.

Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.

For more information, please contact our employment team at 408-356-3000 or via email: Roger Mason at rmason@smwb.com or Rachael Brown at reb@smwb.com.

The following links may assist you in evaluating some of the issues you may have. Stay safe!

DOL Publications:

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

IRS Guidelines:

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

CDC Guidelines:

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)

OSHA:

[Preparing Your Workplace for COVID-19](#)

California:

[Stay at Home Order](#)

[EDD COVID-19 Overview](#)

[EDD COVID-19 FAQs](#)

Santa Clara County:

[Updated Shelter-in-Place](#)

[Social Distancing Protocol](#)

[Public Health Department FAQs on the Shelter in Place Order](#)

San Jose:

Paid Sick Leave Ordinance



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

Sweeney Mason LLP
983 University Ave, Suite 104C | Los Gatos, CA 95032 US
408.356.3000
www.smwb.com