

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: March 25, 2020

TO: Honorable Members of the City Council

FROM: Sharon M. Tso *SMT80*
Chief Legislative Analyst

Council File No.: 20-0147-S39

Assignment No.: 20-03-0321

PAID SICK LEAVE DURING THE COVID-19 HEALTH CRISIS

SUMMARY

On March 4, 2020, the Mayor and the Governor both declared a state of emergency due to the outbreak of the novel coronavirus, COVID-19. On March 13, 2020, the White House declared a national emergency. In response to the outbreak, Congress passed H.R. 6201, the Families First Coronavirus Response Act, which requires that certain employers provide an additional two weeks of paid leave to eligible workers during the COVID-19 crisis.

Introduced on March 17, 2020, Motion (Martinez – Wesson) instructed this Office to assess federal and State legislation to identify any gaps in the paid leave that was being provided for workers amidst the COVID-19 public health crisis. This report outlines our Office's findings and recommends that the City Attorney be requested to draft an ordinance requiring all employers not already doing so to provide employees with at least two weeks of paid COVID-19-related leave during the current public health crisis consistent with federal guidelines.

RECOMMENDATION

That the Council request the City Attorney to prepare and present an ordinance requiring employers within the City that are not already doing so to provide all employees with paid sick leave in order to achieve two weeks (10 days) of COVID-19-related paid leave to the extent permitted by law, as outlined in this report.

DISCUSSION

Signed into law on March 18, 2020, H.R. 6201 provides certain workers with two weeks of emergency paid sick leave due to COVID-19 if:

- The employee is subject to a Federal, State, or local quarantine or isolation order;
- The employee has been advised by a health care provider to self-quarantine;
- The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis;
- The employee is caring for an individual who has been ordered to quarantine or isolate or advised by a health care provider to self-quarantine; or
- The employee is caring for their child due to school or childcare closure or unavailability.

Under H.R. 6201, which is set to go into effect on April 2, 2020, employers with fewer than 500 employees will be required to provide full-time employees with 80 hours of paid sick leave at their regular rate of pay unless the employee is taking time off to care for an individual or child due to

the COVID-19 outbreak, in which case the employee is to be provided with 80 hours of paid sick leave at two-thirds their regular pay. Employees taking leave to care for a child due to school or childcare closure will also be entitled to an additional ten weeks of paid family leave at two-thirds their regular pay subsequent to the two weeks of sick leave for a cumulative total of 12 weeks of paid leave (two weeks of sick leave and 10 weeks of family leave) at two-thirds their regular pay.

While the paid leave (sick and family) under this bill are based on an employee's regular rate of pay, the 80 hours of paid sick leave are capped at \$511/day for employees (a) subject to a quarantine order, (b) advised by a health care provider to self-quarantine, or (c) experiencing COVID-19 symptoms and seeking medical diagnosis. For employees caring for someone due to COVID-19 or caring for a child due to the closure of school or childcare, the hours of paid sick leave are capped at \$200/day. Part-time workers are also included under the bill; however, they will be provided with paid sick leave based on the number of hours they would typically work in a two-week time period.

Employers subject to this bill must provide workers with the two weeks of emergency paid sick leave regardless of how long the employee has been employed or how much sick leave an employee has accrued. The 80 hours of paid sick leave are to be in addition to any accrued sick leave that the employee is already entitled to. In order to qualify for the additional ten weeks of paid family leave to care for a child, employees must have been employed for at least 30 days.

The U.S. Department of Labor's Wage and Hour Division is in the process of writing the rules and regulations that will determine how H.R. 6201 is implemented. These guidelines should be released by April 2, 2020. Additionally, H.R. 6201 may be further amended by future legislation. Until the regulations are issued, the City will not be able to ascertain with exact specificity which workers are excluded and included.

However, H.R. 6201 does explicitly outline some exceptions. Employers with 500 or more employees are excluded from the paid sick leave requirements. Employers with fewer than 50 employees may be exempted at the discretion of the U.S. Secretary of Labor if the paid leave requirement would "jeopardize the viability of the business."

Under H.R. 6201, the U.S. Secretary of Labor will also have the discretion to either exclude all healthcare and emergency responder employees or to provide employers with the option to opt-out of providing healthcare and emergency responder employees with the additional paid sick leave. For the 10 weeks of paid family leave created by H.R. 6201, employers may choose to not provide this added benefit to healthcare and emergency responder employees.

H.R. 6201 will reimburse employers for the mandated paid sick leave through tax credits. The provisions of H.R. 6201 expire after December 31, 2020 and workers may not be compensated for unused sick time provided under this bill.

Though the federal government will reimburse employers through tax credits, some small employers may lack the upfront funds to provide all employees with two weeks of paid sick leave. Employers with less than 50 employees whose business the federal government determines would be rendered unviable by the paid sick leave requirement are exempted. Requiring these exempted

small firms to provide two weeks of paid sick leave could risk placing an insurmountable burden on their business. A potential unintended consequence of requiring all employers to provide two weeks of paid COVID-19-related leave could be that employers opt to lay off employees in order to avoid having to pay these benefits.

The State has been supplementing workers' incomes through Unemployment Insurance, Disability Insurance, and Paid Family Leave. Currently, if a worker is unable to work because their child's school has been closed and they cannot work remotely or if their employer has reduced hours or shut down operations due to COVID-19, then the worker is eligible for Unemployment Insurance. If an employee must provide care for a family member due to COVID-19, they are eligible for Paid Family Leave. Lastly, if an employee is unable to work because of exposure to COVID-19 then they are eligible for Disability Insurance through the State. Neither Unemployment or Disability Insurance nor Paid Family Leave is paid at an employee's regular rate of pay.

Currently, the City's sick leave regulations require an employer to provide employees with at least 48 hours of paid sick leave or 1 hour for every 30 hours worked. Under State law for family leave, employees of firms with 25 or more employees are entitled to up to 40 hours of family leave if a child's school or childcare is closed; however, this family leave is not required to be paid. Both policies currently fall short of providing workers with a guaranteed two weeks of paid leave, sick or family, during this public health crisis.

As the federal guidelines for H.R.6201 have yet to be released and may be further amended by future federal legislation, the City may be preempted from requiring certain employers to provide the two weeks of additional paid COVID-19-related leave to all employees. In order to ensure that as many workers as possible are provided with two weeks of paid COVID-19-related leave in the City, this Office is recommending that the City Attorney be requested to prepare an ordinance requiring all employers within the City who are not already providing their employees with an additional two weeks of paid leave in response to COVID-19 to do so to the extent permitted by law.

Employees should be eligible to use this additional two weeks (80 hours) of paid leave based on the same standards as provided in H.R. 6201:

- The employee is subject to a Federal, State, or local quarantine or isolation order;
- The employee has been advised by a health care provider to self-quarantine;
- The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis;
- The employee is caring for an individual who has been ordered to quarantine or isolate or advised by a health care provider to self-quarantine; or
- The employee is caring for their child due to school or childcare closure or unavailability and is unable to work remotely.

Employers should provide up to 80 hours of paid COVID-19-related leave at employees' regular rates for full-time employees and part-time employees should be provided with paid leave hours comparable to the number of hours they would work in a typical two-week time period, as consistent with the federal guidelines for H.R. 6201.

Violations of H.R. 6201 will be treated the same as violations of the federal minimum wage law, which the U.S. Department of Labor, the California Department of Industrial Relations' Division of Labor Standards, and the City's Bureau of Contract Administration may enforce against. This ordinance should also create a private right of action to allow any aggrieved employee to take civil action against an employer who is not providing two weeks of paid leave in response to the COVID-19 outbreak in compliance with the City's ordinance.



Matthew Shade
Analyst

Attachments: 1. Motion

SMT:MF:MAJS

MOTION

72-HH

COVID-19, which was initially detected in China in December, has since spread to at least a 110 countries worldwide. In the US, there are now over 1000 cases of COVID-19. The outbreak in the US has led to states of emergency being declared, events and campaign rallies being cancelled and schools and college campuses being shut down. The Centers for Disease Control and Prevention (CDC) has recommended social distancing, working from home or staying home when you're not feeling well. While these guidelines are helpful, for the working poor it is difficult, if not impossible, to abide by. Most of these families live paycheck to paycheck and cannot afford to miss work.

On March 10, 2020 a Walmart employee in Kentucky tested positive for COVID-19. In an effort to ensure that that employee, and any other employee who may test positive for the virus, is able to take time off without causing financial turmoil for their family, Walmart launched an emergency leave program. The program, which is available for its 1.4 million employees across the country, provides up to two weeks paid time off if an employee is required to be quarantined by the government or the store, or if the employee tests positive for COVID-19. Other businesses are also stepping up to offer similar benefits to their employees. However, access to paid time off during a public health crisis or disaster shouldn't depend on the generosity of your employer.

In recognition of this, H.R. 6201 was introduced in Congress. The legislation would require all employers to provide at least 14 days of sick leave during a public health crisis. In addition the bill, would ensure paid time off when a child's school is closed due to a public health crisis, when an employer closes down the workplace due to the crisis, or when a family member is quarantined. While it appears that Congress will pass the bill, there are gaps in the current legislation that would potentially leave out low-wage workers and families living paycheck to paycheck. The City of Los Angeles, with its Families First agenda, needs to affirm that every family has access to these benefits. Low-wage workers are the most vulnerable during a public health crisis or major disaster. They shouldn't have to choose between their job and livelihood or the public health and their personal health. City of Los Angeles must ensure that families and low-wage workers are protected during this public health crisis, and other future crises and disasters, as it is important for public health and our economy.

I THEREFORE MOVE that City Council instruct the Chief Legislative Analyst, in consultation with the City Attorney's Office and Bureau of Contract Administration, to assess the proposed federal legislation, and any State legislation on paid leave, for gaps in coverage and report back in 30 days with recommendations for a local emergency leave program that protects all workers, including subcontractors and contractors, and provides 14 days paid leave during a major disaster or public health crisis.

I FURTHER MOVE that City Council instruct City Attorney to report back on whether the City can provide any business tax relief during a major disaster or public health crisis.

MAR 17 2020

PRESENTED BY:

NURY MARTINEZ

Councilwoman, 6th District

SECONDED BY:

(SEE COUNCIL FILE NO. 20-0147-S39)