

CITY OF LOS ANGELES



RULES AND REGULATIONS IMPLEMENTING THE PUBLIC ORDER ON SUPPLEMENTAL PAID SICK LEAVE DUE TO COVID-19

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Note: These Rules and Regulations are guidelines to help employers and employees understand their responsibilities and rights. We anticipate that these Rules and Regulations will be updated and encourage those implementing the Supplemental Paid Sick Leave Public Order to check <https://wagesla.lacity.org> regularly for the latest guidance available from the Office of Wage Standards.

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SCOPE OF OWS AUTHORITY

The Department of Public Works, Bureau of Contract Administration, Office of Wage Standards (“OWS”) promulgates these Rules and Regulations as authorized by the Public Order on Supplemental Paid Sick Leave Due to COVID-19 issued by Mayor Eric Garcetti on April 7, 2020. The OWS may also amend or revise these Rules and Regulations from time to time, consistent with applicable law.

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REGULATION #1: DETERMINING WHO IS AN EMPLOYEE

An Employee who has been employed with the same Employer from February 3, 2020 through March 4, 2020 and is unable to work or telework for that Employer is covered by the Supplemental Paid Sick Leave (SPSL) Public Order.

For the purposes of the SPSL Public Order, an Employee is any individual who performs any work within the geographic boundaries of the City for an Employer. A worker is presumed to be an Employee, and an Employer has the burden to demonstrate that a worker is a bona fide independent contractor and not an Employee. Merely labeling a worker as an “independent contractor” does not make it so. California (CA) law will be applied.

Example 1: An Employee works for a company that is located in Riverside, CA since June 2019. The Employee makes monthly deliveries to a client located in the City of Los Angeles but is now unable to do so or perform other work for this company. The Employee would be covered by the SPSL Public Order.

Also see REGULATION #3: EXEMPTIONS.

Telecommuting

An Employee who performs work or teleworks inside the geographic boundaries of the City of Los Angeles is covered by the SPSL Public Order, even if their Employer is based outside of the City or the Employee’s regular workplace is outside the City.

Example 2: An Employee who normally works for a company at a location outside the City, but is telecommuting from a home inside the City, would be covered by the SPSL Public Order.

Example 3: An Employee who normally works for a company at a location outside the City and is telecommuting from a home outside the City, would not be covered by the SPSL Public Order.

Example 4: An Employee who normally works for a company at a location inside the City, but is telecommuting from a home outside the City, would be covered by the SPSL Public Order.

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REGULATION #2: DETERMINING WHO IS AN EMPLOYER

An Employer is a person (see CA Labor Code Section 18), including a corporate officer or executive, who directly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employee.

The SPSL Public Order applies to an Employer that has either:

1. 500 or more employees within the City of Los Angeles; or
2. 2,000 or more employees within the United States.

Determining the Number of Employees

The size of an Employer's business shall be determined by the average number of employees employed during the previous calendar year. The number of employees includes, but is not limited to workers that were full-time employees, part-time employees, temporary or seasonal employees, and workers supplied through a temporary employment agency.

A worker that worked in multiple locations should be counted as an Employee within the City of Los Angeles if they performed any work within the City's geographic boundaries in the previous calendar year.

Example 1: A company has one location inside the City of Los Angeles and one location outside the City of Los Angeles. In the previous calendar year, the company averaged 234 employees. The SPSL Public Order would not apply to this Employer or its Employees.

Example 2: A large national chain has 3000 employees nationwide and one location in the City with 20 Employees. The 20 Employees at the location in the City would be covered by the SPSL Public Order.

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REGULATION #3: EXEMPTIONS

A. Emergency and Health Services Personnel.

An Employee of an Employer with any number of Employees who are either Emergency Personnel or a healthcare worker is not covered by the SPSL Public Order. See City of Los Angeles Safer at Home emergency Public Order Paragraph 5(vi), CA Government Code Section 12945.2(c)(6), and California Health & Safety Code Section 1250.

Example 1: A security worker or receptionist that works inside a hospital would not be eligible for supplemental paid sick leave because the hospital is providing healthcare services.

B. Critical Parcel Delivery.

An Employee of an Employer that provides global parcel delivery services is not covered by the SPSL Public Order. During this pandemic, global parcel delivery is considered an essential Emergency Service necessary for health and safety reasons.

C. Generous Leave.

An Employer with a paid leave or paid time off policy that provides Employees with 160 hours or more of paid leave on an annual basis is exempt from providing supplemental paid sick leave to those Employees. This includes, but is not limited to, paid vacation time, CTO or compensated time off, and paid sick leave. Paid holidays and access to paid bereavement leave do not count toward the 160 hour minimum. Any Employee who does not receive 160 hours or more of annual paid leave is covered by the SPSL Public Order.

Example 3: A company provides its new Employees with an annual allotment of 80 hours of paid sick leave and 40 hours of paid vacation time upon hire. After working for five years with the company, Employees receive 80 hours of paid sick leave and 80 hours of paid vacation time each year. The Employer would not be exempt from providing supplemental paid sick leave to an Employee who has worked for the company for two years and receives 120 hours of paid leave annually but would be exempt from providing supplemental paid sick leave to an Employee who has worked for the company for 7 years and receives 160 hours of paid leave annually.

D. New Business Exemption.

Any new business that opened in the City or a business that relocated to the City from outside the City between the period of September 4, 2019 and March 4, 2020 is exempt.

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Construction businesses as defined in Section 21.30 b.1 of the Los Angeles Municipal Code or film producers as defined in Section 21.109 of the Los Angeles Municipal Code are not qualified for the new business exemption.

Documents that could be utilized to demonstrate this status include, but are not limited to, lease documentation for business property in the City, Business Tax Registration Certificate documentation, or Articles of Incorporation.

E. Government.

The SPSL Public Order does not apply to employees of government agencies working within the course and scope of their public service employment.

Contractors of the government are not exempt.

F. Closed Businesses and Organizations.

Any business or organization that was closed or not operating for a period of 14 or more consecutive days, anytime on or after March 4, 2020, due to a city official's emergency order because of the COVID-19 pandemic is exempt from the requirements of the SPSL Public Order.

G. Collective Bargaining Agreement (CBA).

A collective bargaining agreement in place on the effective date of the SPSL Public Order may supersede the provisions of the SPSL Public Order if it contains COVID-19 related sick leave provisions. When the CBA expires or is otherwise open for renegotiation, the provisions of the SPSL Public Order may only be expressly waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a CBA is in place on the effective date of the SPSL Public Order but the CBA does not address COVID-19 related sick leave provisions, the Employer must comply with the SPSL Public Order unless and until the CBA is amended to expressly waive in clear and unambiguous terms set forth in the CBA.

An Employer remains subject to all applicable provisions of the SPSL Public Order for the time period not covered by the superseding CBA. If the Employer has not complied with the SPSL Public Order's requirements during the time period not covered by the superseding CBA, the Employer shall be required to make retroactive corrections for any period of violation, which may include making retroactive payments to affected Employees for the relevant periods of violation.

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REGULATION #4: REQUESTS FOR SUPPLEMENTAL PAID SICK LEAVE

A. Providing Supplemental Paid Sick Leave to an Employee.

An Employer shall provide supplemental paid sick leave upon the oral or written request of an Employee if:

1. The Employee takes time off due to COVID-19 infection or because a public health official or healthcare provider requires or recommends the Employee isolate or self-quarantine to prevent the spread of COVID-19;
2. The Employee takes time off work because the Employee is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
3. The Employee takes time off work because the Employee needs to care for a family member who is not sick but who public health officials or healthcare providers have required or recommended isolation or self-quarantine; or
4. The Employee takes time off work because the Employee needs to provide care for a family member whose senior care provider or whose school or child care provider caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public official's recommendation. This provision is only applicable to an Employee who is unable to secure a reasonable alternative caregiver.

B. Requiring Documentation from an Employee.

An Employer may not require a doctor's note or other documentation for the use of supplemental paid sick leave. Furthermore, an Employer may not inquire into or require an Employee to provide a description or explanation of the illness or condition necessitating the Employee's leave. However, an Employer may require an Employee to, verbally or in writing, provide the reason for taking leave — such as child care, quarantine, vulnerable medical condition, caring for a family member — for purposes of recordkeeping. The Employer's policy should not be so difficult that it deters an Employee from taking legitimate supplemental paid sick leave.

An Employer and an Employee may not reach an agreement to waive the SPSL Public Order obligations.

C. Employer Offset.

The supplemental paid sick leave is separate and apart from any regular paid sick leave that the Employer provided or continues to provide the Employee, such as regular accrued paid sick leave required by law.

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However, an Employer's obligation to provide 80 hours of supplemental paid sick leave under the SPSL Public Order shall be reduced for every hour an Employer allows an Employee to take paid leave that was compensated at the amount required by the SPSL Public Order (see REGULATION #5), not including previously accrued hours, on or after March 4, 2020, for any of the four reasons described in Section A above, or in response to an Employee's inability to work due to COVID-19.

Example 1: A full-time Employee who was exposed to a known COVID-19 case on March 15, 2020 was directed by a County Public Health official to self-quarantine. The Employer provided the Employee with paid administrative leave for 80 hours at their full salary rate in March, while the Employee stayed home and completed their quarantine period. The 80 hours of paid administrative leave would offset the Employer's obligation under the SPSL Public Order. The Employer would not be required to provide any additional supplemental paid sick leave to that Employee.

Example 2: A full-time Employee who was exposed to a known COVID-19 case on March 15 was directed by a County Public Health official to be tested for COVID-19. The Employee stayed home for a week in self-quarantine until they received their negative test results and were cleared to return to work immediately. The Employer provided the Employee with paid administrative leave for 40 hours at their full salary rate while they were home awaiting their test result. The Employee then returned to work healthy. The 40 hours of paid administrative leave would partially offset the Employer's obligation to provide 80 hours of supplemental paid sick leave under the SPSL Public Order. The Employer would be required to provide 40 additional hours of supplemental paid sick leave to that Employee.

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REGULATION #5: PAYMENT OF SUPPLEMENTAL PAID SICK LEAVE

An Employer must provide 80 hours of supplemental paid sick leave to an Employee who works at least 40 hours per week or is classified as a full-time Employee by the Employer. The rate of pay for those Supplemental Paid Sick Leave hours is calculated at an Employee's average two-week pay between February 3, 2020 and March 4, 2020.

An Employer must provide supplemental paid sick leave to an Employee who works less than 40 hours per week and is not classified as a full-time Employee by the Employer. The rate of pay for those Supplemental Paid Sick Leave hours is calculated in the amount equivalent to an Employee's average two-week pay between February 3, 2020 and March 4, 2020. The amount of Supplemental Paid Sick Leave hours that must be provided to this Employee is determined by adding the number of hours worked in four consecutive weeks during this period, and dividing that total by 2.

Overtime premiums are not to be considered when calculating an Employee's average two-week pay. However, the base rate before the premium for any overtime hours should be included in the calculation.

Example 1: A company has an established policy of considering Employees to be full-time workers if they work 35 hours per week. An Employee in this situation would be eligible for supplemental paid sick leave.

Example 2: An Employee works 40 hours per week. In the two-week pay period from February 5 - February 18, the Employee's gross pay was \$1600 with an average hourly rate of \$20/hour. In the two-week period from February 19 - March 3, the Employee's gross pay was \$1760 with an average hourly rate of \$22/hour. If the employee is provided supplemental paid sick leave, the 80 hours should be compensated at a rate of \$21/hour.

Example 3: A full-time Employee that typically works 40 hours per week also worked 10 hours of overtime per week for a total of 50 hours per week in both pay periods from February 5 - February 18 and February 19 - March 3. Regular hours worked were compensated at \$20/hour. Each overtime hour was paid at a premium rate of 1.5 times the regular hourly rate or \$30/hour. If the Employee is provided supplemental paid sick leave, the 80 hours should be compensated at a rate of \$20 per hour.

Example 4: A part-time Employee works 4 hours per day, 5 days a week, for a total of 20 hours per week. In the two-week pay period from February 5 - February 18, the Employee's gross pay was \$800 with an average hourly rate of \$20/hour for the 40 hours worked in the pay period. In the two-week period from February 19 - March 3, the Employee's gross pay was \$880 with an average hourly rate of \$22/hour for the 40 hours worked in the pay period. If the Employee is

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provided supplemental paid sick leave, they would be entitled to 40 hours of supplemental paid sick leave that should be compensated at a rate of \$21/hour.

The supplemental paid sick leave amount paid to an Employee shall not exceed \$511 per day and \$5,110 in the aggregate. Employees of joint Employers are only entitled to the total aggregate amount of leave specified for Employees of one Employer.

If an Employee chooses not to use the supplemental paid sick leave time consecutively, but instead would like to use it periodically, this is allowed until the supplemental paid sick leave limit is met.

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REGULATION #6: RECORDKEEPING

An Employer should retain documentation of compliance, including, but not limited to, documentation of paid leave provided to Employees and requests for supplemental paid sick leave. Documentation should include the name of the Employee requesting the leave, the date for which it is requested, the category or reason for the leave, and whether or not it was approved, and if not, the reason for denial.

An Employer should also retain documentation substantiating any applicable exemption. Examples might include documentation of a new business filing or documentation showing that Employees have access to at least 160 hours of paid leave.

An Employer must keep any records in accordance with any applicable local, state, or federal law. This includes, but is not limited to, hours worked each day and total hours worked in each workweek.

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REGULATION #7: ENFORCEMENT

An Employee claiming a violation of the SPSL Public Order may bring an action in Superior Court of the State of California against an Employer and may be awarded:

1. Reinstatement to the position the Employee was discharged in violation of the SPSL Public Order.
2. Back pay and supplemental paid sick leave unlawfully withheld, calculated at the Employee's average rate of pay.
3. Other legal or equitable relief the court may deem appropriate.

If an Employee is the prevailing party in any legal action taken pursuant to the SPSL Public Order, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

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REGULATION #8: RETALIATION

No Employer shall discharge, reduce in compensation, or otherwise discriminate against any Employee for opposing any practice proscribed by the SPSL Public Order, for requesting to use or actually using supplemental paid sick leave under the SPSL Public Order, for participating in proceedings related to the SPSL Public Order, for seeking to enforce their rights under the SPSL Public Order by any lawful means, or for otherwise asserting rights under the SPSL Public Order.

Additional forms of retaliation may include, but are not limited to, a reduction in hours, demotion, reassignment to a less desirable assignment or location or schedule, or the denial or reduction of other benefits.

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REGULATION #9: PRE-EXISTING LAWS

The exemptions listed in these Rules and Regulations do not exempt an Employer from complying with any and all federal, State, or local laws and regulations related to sick leave.

An Employer must still comply with the federal Families First Coronavirus Response Act (HR 6201).

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REGULATION #10: EXPIRATION

The SPSL Public Order will be in effect until two calendar weeks after the local state of emergency for COVID-19 is lifted.