

COVID-19 PAID SICK LEAVE ORDINANCE

April 16, 2020

This letter responds to the question regarding a covered employer's exemption from the Ordinance based on Section 11.B. This employer already provides the amount of sick leave hours required by the Ordinance, and on the Ordinance effective date, the eligible employee has already exhausted some or all provided sick leave hours.

OPINION

The employer is not exempt from the requirements of the Ordinance. Employers covered by the Ordinance are required to provide, on the Ordinance effective date, at least the number of paid sick leave hours required by Section 9, regardless of paid sick leave accrued or used by the employee prior to the effective date. The employer must provide the amount of sick leave hours needed to bring the employee up to the total hours required by Section 9.

For example, assume an employer provides a full-time employee with eighty (80) hours of paid sick leave on January 1, 2020, and the employee had used twenty-four (24) hours of paid sick leave by the Ordinance effective date. To comply with the Ordinance, the employer must provide the employee with twenty-four (24) hours of additional paid sick leave on the Ordinance effective date. The additional twenty-four (24) hours is subject to the limitation that it can be used only for the COVID-19 related reasons in the Ordinance.

ANALYSIS

On April 7, 2020, the City Council adopted the COVID-19 Paid Sick Leave Ordinance (COVID PSL) (No. 30390). The Ordinance requires certain employers to provide employees performing "essential work" outside of their residences with paid sick leave to be used for specified COVID-19 related purposes.

Section 11.B. of the Ordinance states:

This Ordinance does not apply to any Employer that provides its Employees, on the effective date of this Ordinance, with some combination of paid personal leave at least equivalent to the paid sick time required by this Ordinance. An Employer that provides some combination of paid personal leave less than the paid sick time required by this Ordinance is required to comply with this Ordinance to the extent of such deficiency.

Section 9 of the Ordinance sets forth the number of paid sick leave hours that must be provided to full-time and part-time employees.

The plain language of the first sentence of Section 11.B. mandates that, to be exempt, the employer must provide at least the required number of paid sick leave hours on the Ordinance effective date. Additionally, the plain language of Section 11.B. is consistent with one of the Ordinance's objectives, which is to limit the spread of COVID-19 by providing employees who leave their homes to provide "essential work" with paid sick leave so they don't feel compelled to leave their homes even though they are advised to self-quarantine due to COVID-19 exposure or are experiencing symptoms of COVID-19.

Finally, the Ordinance was intended to follow the federal Emergency Sick Leave Act. The above guidance provided by the OEA Director is consistent with the guidance set forth by the Department of Labor - Wage and Hour Division in the following [FAQ for the Emergency Sick Leave Act](#):

“Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?”

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.”

Sincerely,

Christopher Hickey
Director
Office of Equality Assurance