

AUTHORITIES

California Labor Code §248.2 - COVID-19 Supplemental Paid Sick Leave.

The addition of Section 248.2 to the California Labor Code is effective March 29, 2021 and its provisions apply retroactively to January 1, 2021 and end on September 30, 2021.

POLICY

It is the policy of the City of San Jose (“City”) to comply with the provisions of California Labor Code Section 248.2 relating to COVID-19 Supplemental Paid Sick Leave. Rights and obligations that are not specifically addressed in this policy are incorporated in by reference.

A. Eligibility

An employee who is unable to work or telework because of a COVID-19 related reason, as set forth in Section C below, is eligible for COVID-19 Supplemental Paid Sick Leave.

B. Amount of COVID-19 Supplemental Paid Sick Leave

An eligible employee shall be entitled to Covid-19 Supplemental Paid Sick Leave as follows:

1. For full-time employees, eighty (80) hours.
2. For part-time employees, the total number of hours the employee is normally scheduled to work over two weeks, or, if the employee works a variable number of hours, fourteen (14) times the average number of hours the employee worked each day in the six (6) months preceding the date that the employee took COVID-19 Supplemental Paid Sick Leave.
3. For a firefighter who is scheduled to work more than eighty (80) hours in the two (2) weeks preceding the date that the firefighter took COVID-19 Supplemental Paid Sick Leave, the total number of hours that the firefighter was scheduled to work in those two preceding weeks.

C. COVID-19 Supplemental Paid Sick Leave Requirement

The City shall provide to each eligible employee COVID-19 Paid Supplemental Sick Leave to the extent that the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.
4. The employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

5. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. The employee is caring for a family member¹ who is subject to an order or guidelines, as described in (1) above or who has been advised to self-quarantine, as described in (2) above.
7. The employee is caring for a child² whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

D. Calculation of Pay For COVID-19 Supplemental Paid Sick Leave

1. Each hour of COVID-19 Supplemental Paid Sick Leave shall be compensated at a rate equal to the following:
 - a) For nonexempt eligible employees, by the highest of the following:
 - i. Calculated in the same manner as the regular rate of pay for the workweek in which the employee uses COVID-19 Supplemental Paid Sick Leave, whether or not the employee actually works overtime in that workweek.
 - ii. Calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
 - iii. The state minimum wage.
 - iv. The local minimum wage to which the employee is entitled.
 - b) COVID-19 Supplemental Paid Sick Leave for eligible exempt employees shall be calculated in the same manner as the City calculates wages for other forms of paid leave time.
2. Notwithstanding Section D1 above, sworn fire personnel who are entitled to an amount of California COVID-19 Supplemental Paid Sick Leave under Section B3 above, shall be compensated for each hour of COVID-19 Supplemental Paid Sick Leave at the regular rate of pay to which the employee would be entitled as if the firefighter had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.
3. The City is not required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to an eligible employee for COVID-19 Supplemental Paid Sick Leave taken by the employee unless federal legislation is enacted that increases these amounts beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new federal dollar amounts shall apply to this section as of the date the new amounts are applicable under

¹ A "family member" means a child, parent, spouse, registered domestic partner, grandparent, grandchild and sibling. The term "parent" includes the biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

² A "child" means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

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the federal law. Any employee who reaches the maximum amount to be paid (currently \$511 per day) may supplement with their own leave to remain in fully paid status.

4. In the event that an individual employee receives more California COVID-19 Supplemental Paid Leave than they are entitled to, a timecard adjustment will be processed and any available accrued leave will be substituted, as appropriate and depending on the reason for the leave.
5. If the City pays an eligible employee another supplemental benefit for leave taken on or after January 1, 2021, that is payable for the reasons listed in Section C above and that compensates the employee in an amount equal to or greater than the amount of compensation for COVID-19 Supplemental Paid Sick Leave to which the employee is entitled as set forth under this Section D 1 or 2, then the City may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 Supplemental Paid Sick Leave that the City is required to provide to the employee. Thus, any hours of paid sick leave provided to an eligible employee on or after January 1, 2021 pursuant to the City’s Revised COVID-19 Sick Leave ordinance may count towards the total number of hours of COVID-19 Supplemental Paid Sick Leave.

E. Health Benefits and Insurance Premiums

While an eligible employee is on COVID-19 Supplemental Paid Sick Leave, the City will continue the employee’s health benefits during the leave period at the same level and under the same conditions as if the employee continued to work. The employee is responsible for their portion of health benefits and insurance premiums.

PROCEDURES

Employee	<p>Employees who require leave for a COVID-related reason as defined in Section C of this Policy may submit an application to the Office of Employee Relations.</p> <p>Applications for leave should be submitted in advance whenever possible and as soon as practicable, but not later than one week after the employee has returned to work, for leave that is unforeseeable.</p>
Office of Employee Relations	<p>The Office of Employee Relations will review the application and will confirm employee eligibility.</p> <p>The Office of Employee Relations will notify employees if eligible for leave or not and will inform eligible employees how to code their time.</p>
Employee	<p>Eligible employees will code their timecards based on instructions provided by the Office of Employee Relations.</p>

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Approved:

/s/ Jennifer Schembri
Director of Employee Relations
Director of Human Resources

March 29, 2021
Date

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

March 29, 2021
Date