

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: RAISSA DE LA ROSA,
ECONOMIC DEVELOPMENT DIVISION DIRECTOR
JEFF BERK, CHIEF ASSISTANT CITY ATTORNEY
SUBJECT: URGENCY ORDINANCE ADDING CHAPTER 10-47 TO THE SANTA
ROSA CITY CODE TO ENACT EMPLOYER REQUIREMENT TO
PROVIDE COVID RELATED PAID SICK LEAVE BENEFITS
THROUGH MARCH 31, 2021

AGENDA ACTION: URGENCY ORDINANCE

RECOMMENDATION

It is recommended by the Economic Development Subcommittee that Council adopt an urgency ordinance to require employers to provide COVID-related paid sick leave benefits through March 31, 2021, to replace the expired ORD-2020-006 previously adopted by Council.

EXECUTIVE SUMMARY

In response to the COVID-19 public health emergency and local, state and national emergency orders, Congress enacted the Emergency Paid Sick Leave Act requiring certain employers provide employees COVID-related paid sick leave. On July 7, 2020, Council adopted urgency ordinance ORD-2020-006 adding Chapter 10-47 to the Santa Rosa City Code to address some of the gaps in the federal law. Both the federal law and City ordinance expired December 31, 2020. This new urgency ordinance would replace the expired Chapter 10-47 and require that employers provide COVID-related paid sick leave benefits similar to those previously required by federal law and the now expired City ordinance. This new urgency ordinance would be effective upon adoption through March 31, 2021. Under the City Charter, five affirmative votes are necessary to adopt an urgency ordinance

BACKGROUND

Emergency Paid Sick Leave Act:

The Emergency Paid Sick Leave Act ("EPSLA" or "the Act") required all private employers with up to 500 employees and all public employers to provide up to 80 hours of paid sick leave (pro rata for part-time employees) in addition to any leave already provided by the

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employer to any employees who must be absent from work and is unable to telework because the employee:

1. Was subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Had been advised by a health care provider to self-quarantine related to COVID-19;
3. Was experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Was caring for an individual subject to an order described in (1) or self-quarantine as described in (2); or
5. Was caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

The benefit was available to all employees between April 1, 2020, through December 31, 2020, and did not require employees to use other paid leave before using the EPSLA benefit. Small businesses with fewer than 50 employees could qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern. Employers of health care workers and emergency responders, as defined in the Act, were exempted at the discretion of the Employer.

The EPSLA benefit was paid at the employee's regular rate of pay if the employee was absent for his or her own illness (reasons 1, 2, or 3 above), but was capped at \$511/day or \$5,110 total. The EPSLA was paid at two-thirds of the employee's regular rate of pay if the employee is absent to care for a family member (reasons 4 or 5 above), capped at \$200/day or \$2,000 total.

Regarding tax credits per the Act: employers could receive a tax credit of up to 100% of the amount of the EPSLA benefit paid to employees, up to a maximum of \$511/day in the case of the employee's own illness or \$200/day if the employee is receiving leave to care for a family member. The tax credit is provided against the employer's portion of Social Security taxes, which can be applied quarterly. Self-employed individuals may also be eligible for these tax credits.

Santa Rosa Urgency Ordinance ORD-2020-006:

Council adopted Urgency Ordinance ORD-2020-006 on July 7, 2020, to add Chapter 10-47 to the Santa Rosa City Code to establish temporary sick leave requirements for certain private employers. The urgency ordinance, like the federal law, sunset on December 31, 2020.

ORD-2020-006 included the following provisions:

- Applied to all employers, including those already covered by the Act, and including employers with health care providers and emergency responders as defined in the Act.

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- Government employers were exempt from the local ordinance as they were already included in the EPSLA.
- Removed the \$2,000 maximum cap and 2/3 of salary limitation for child care and/or caring for another person for COVID reasons.
- Created one benefits cap of \$510/day/employee up to \$5,110.
- Allowed employers an offset for COVID-related leave already given to an employee before the effective date of this ordinance.
- Modified the scope of benefit for employees caring for another or a child.
- Was enforced by an employee bringing an action in Superior Court (i.e. City was not responsible for enforcement).

PRIOR CITY COUNCIL REVIEW

On July 7, 2020, Council unanimously approved ORD-2020-006 adding Chapter 10-47 to the Santa Rosa City Code, temporary sick leave requirements for certain private employers, which sunset on December 31, 2020.

ANALYSIS

The Economic Development Subcommittee met on January 19, 2021, and recommends this new urgency ordinance replace the expired Chapter 10-47 and require that employers provide COVID-related paid sick leave benefits similar to those previously required by federal law, as outlined below. Employers would not be required to supply a new leave bank for employees who already availed themselves of the 80 hours. This new urgency ordinance would be effective upon adoption through March 31, 2021. The Subcommittee selected this date, in part, because while the federal law expired, congress did extend the tax credit to that date. Under the City Charter, five affirmative votes are necessary to adopt an urgency ordinance.

This ordinance would apply to all private employers and the City of Santa Rosa. The only modification to the scope of benefits in the new ordinance compared to those listed in ORD-2020-006 pertain to an employee's eligible rate of pay and compensation cap. Specifically, an employer must pay the employee for properly used sick leave at the employee's regular rate of pay up to \$511 per day not to exceed an aggregate of \$5,110, if an Employee qualifies under the reasons listed as (1)-(3) above, and at two-thirds of the employee's regular rate of pay up to \$200 per day not to exceed an aggregate of \$2,000, if an Employee qualifies under the reasons listed as (4)-(5), above. This will enable employers that were covered by the federal law to receive a dollar for dollar tax credit.

Lastly, to add clarity in alignment with the intent of the health orders and the law, language was added to state if as employer can show that the need for an employee's requested leave is due to the employee's intentional violation of a health order, then the employer may deny the benefit.

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FISCAL IMPACT

It is estimated the cost of enacting this ordinance would be negligible and could be absorbed in the current fiscal year budget.

ENVIRONMENTAL IMPACT

The proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Sections 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action may have significant effects on the environment, and that no further environmental review is required.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

On January 19, 2021, the Economic Development Subcommittee discussed and refined the policy direction received at the January 12, 2021, Council Study Session, offering the attached urgency ordinance to the full Council for consideration.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 – Ordinance ORD-2020-006
- Attachment 2 – Redline changes to the Chapter 10-47
- Urgency Ordinance

CONTACT

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