

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: REVIEW OF TEMPORARY SICK LEAVE REQUIREMENTS AND
OPTIONS FOR CERTAIN EMPLOYERS

AGENDA ACTION: STUDY SESSION

RECOMMENDATION

It is recommended that the Council consider whether to re-adopt and/or expand Ordinance ORD-2020-006 which added Chapter 10-47 to the Santa Rosa City Code to establish temporary sick leave requirements related to COVID-19 for certain employers, and had a sunset date of December 31, 2020.

EXECUTIVE SUMMARY

In response to the COVID-19 public health emergency, Congress enacted the Families First Coronavirus Response Act, effective April 1, 2020. This Act included the Emergency Paid Sick Leave Act (“EPSLA”), which required private employers with fewer than 500 employees and all public employers to provide up to 80 hours of paid leave for reasons related to the pandemic, set payment caps to employees for the leave, and allowed for tax credits for these payments. The EPSLA exempted employers with fewer than 50 employees from some of the EPSLA requirements, if complying would jeopardize the business as a going concern. It also allowed employers to choose whether to provide the benefit to healthcare providers and emergency responders.

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 EPSLA – namely to include employers with 500 or more employees, employers of healthcare providers and emergency responders, and to increase the compensation cap for the benefit for caring for others. Like the Federal law, the ordinance had a sunset of December 31, 2020. This study session is for Council to discuss and provide feedback to staff as to whether to readopt Chapter 10-47 and, if so, whether any changes should be made to it.

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

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); or
5. Is 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 Department of Labor’s Wage and Hour Division administered and enforced the law’s paid leave requirements, which applied from the April 1, 2020, effective date through December 31, 2020. This benefit was available to all employees immediately upon hire, and did not require employees to use other paid leave before using EPSLA. Small businesses with fewer than 50 employees could qualify for exemption from the requirement to provide leave due to school closings or child care 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.

EPSLA 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. 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.

Under the law, employers were prohibited from requiring employees to find a replacement employee to cover their shift during a time when the employee was using EPSLA. EPSLA need not be paid out on termination of employment and could not be used intermittently.

Regarding tax credits for the EPSLA: employers subject to the Act could receive a tax credit of up to 100% of the amount 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 request to consider extending the EPSL Act's coverage to additional employers via local ordinance was presented to the Economic Recovery Task Force by the North Bay Labor Council (NBLC) in a manner similar to what was proposed or being pursued at the time by other jurisdictions, including San Francisco, Oakland, San Jose, Los Angeles, and the County of Sonoma.

The urgency ordinance, like the Federal law, had a sunset of December 31, 2020. Because of the short six-month time frame, the temporary nature of the ordinance, and the urgency of the benefits for impacted employees, it was recommended by the Economic Recovery Task Force to move forward expeditiously with the understanding it would take more time and resources than are currently available to further research and cull data on potential impacts to business.

ORD-2020-006 includes the following provisions:

- Applies to all employers, including those already covered by the Act. This includes employers with Health Care Providers and Emergency Responders (as defined in the Act).
- Government employers are exempt from the local ordinance (but were already included in the EPSLA).
- Employers with less than 50 employees that are experiencing severe economic hardship or if leave is granted would not have sufficient staff are not obligated to provide the benefit for employees needing to provide child care (consistent with EPSLA).
- Removes the \$2,000 maximum cap and 2/3 of salary limitation for child care and/or caring for another person for COVID reasons.
- Creates one benefits cap of \$510/day/employee up to \$5,110.
- Allows employers an offset for COVID related leave already given to an employee before the effective date of this ordinance.
- Would be enforced by an employee bringing an action in Superior Court (i.e. City is not responsible for enforcement).

PRIOR CITY COUNCIL REVIEW

There was no previous Council review specific to re-adopting or expanding ORD-2020-006, however prior City Council review for the creation of that ordinance was as follows:

On July 7, 2020, City Council, unanimously adopted Urgency Ordinance ORD-2020-006, adding Chapter 10-47 to the Santa Rosa City Code establishing temporary sick leave requirements for certain private employers.

ANALYSIS

Data

Staff was unable to find data on use of the program by employees, or the impact of the program on employers for either the federal Act or the local ordinance. When asked, a lobbyist for the National Restaurant Association stated the Association has not been tracking paid leave with their members, however restaurants “were very concerned, at the outset, that they would be strapped with paying for it, then subsequently worried about being saddled to pay and have to wait too long for reimbursement, but I get a sense that those pieces worked out in implementation.”

This statement is generally reflective of feedback from local businesses, yet, again, no report or data source was found at this time regarding use or impact.

Partial data, not specific to Sonoma County, is available on employees by industry sectors with a higher percentage of COVID-19 cases. These sectors include health care and social assistance, agriculture, manufacturing, and transportation and warehousing.

Existing/Ongoing Programs

- **EPSLA Tax Credit:**
While the employee benefits outlined in the Act expired on December 31, 2020, the tax credits remain available through March 31, 2021, for those businesses covered under the federal Act that voluntarily continue the program.
- **California Paid Family Leave:**
Qualifying reasons for leave include caring for a seriously ill family member or to bond with a new child. This benefit is funded solely through employee contributions, generally through paycheck deductions, with employees eligible for up to 8 weeks of leave at 60-70% of wages if they earned at least \$300 from which State Disability Insurance deductions were withheld.
- **California Paid Sick Leave:**
Available if an individual or family member is sick or for preventive care, including when civil authorities recommend quarantine, isolation, or stay-at-home. Amount of leave is based on what an employee has accumulated, typically 1 hour for every 30 hours worked; employer may cap accrual at 48 hours and cap use at 3 days or 24 hours, whichever is greater, within a 12-month period. The benefit begins to accrue upon hire, may be used after 90 days, and is paid at the employee’s regular rate of pay or an average based on the preceding 90 days.
- **Cal/OSHA Regulations:**
On November 30, 2020, Cal/OSHA adopted emergency regulations that require all employers in California (with exceptions for employers that have aerosol transmissible disease exposure control plans, such as hospitals, skilled nursing facilities, clinics, medical offices, and other outpatient medical facilities, long term health care facilities

and hospices, and emergency medical services provided by firefighters and other emergency responders) to continue to keep their employees in paid status if they have COVID-19 or were in close contact with someone in the workplace who had COVID-19. There is no cap that limits this benefit, though it must be work related. If the employee can work from home, they are not entitled to the benefit. These regulations remain in effect until May 30, 2021. .

Council Discussion Points – Options

Staff is seeking feedback from Council whether it wants to let the ordinance remain expired, readopt it as it was originally crafted, or expand it to include employers subject to the EPSLA. If the direction from Council is to readopt the ordinance employees would continue to be entitled up 80 hours of paid sick leave, pro-rated for part time workers, to the extent the employee has not already exhausted those hours, to be paid at their regular rate of pay capped at \$510/day/employee up to \$5,110 max.

The extension date, or new sunset date, is at the discretion of Council. Of the other known jurisdictions that have extended their similar temporary sick leave ordinances, some have selected March 31, 2021, as the end date in coordination with the EPSLA tax credit expiration, while others have selected June 30, 2021.

If Council is interested in replicating the breadth of coverage under the combined expired local and federal laws, a new, expanded local ordinance would be needed. The policy questions for Council include whether to:

- Expand the ordinance to employers with less than 500 employees
- Include the City as a covered employer in the ordinance
- Continue the hardship exemption for businesses with less than 50 employees
- Provide a new leave bank for employees that already used their 80 hours
- Continue to eliminate the lower pay cap.

Depending on the sunset date of an expanded urgency ordinance, the tax credit would only apply until March 31, 2021, and only for those employers that were covered under the federal law at the federally approved caps.

Urgency Ordinance Vote Requirements

Given the EPSL Act expired at the end of 2020, any consideration for re-adoption or expansion would occur using an interim urgency ordinance. Section 8 of the City Charter authorizes adoption of an interim urgency ordinance, to take effect immediately upon passage, when deemed necessary by the Council to preserve the public peace, health or safety. In addition, Government Code section 36937(b) allows the Council to adopt an ordinance to take effect immediately, if it is an ordinance for the immediate preservation of public peace, health or safety, and it contains a declaration of the facts constituting the urgency. Under the City Charter, five affirmative votes are necessary to adopt an urgency ordinance.

Models – Other Jurisdiction Actions

San Mateo County, the city of Sacramento, the County of Sacramento, and San Francisco extended their sick leave ordinances, which would have expired December 31, 2020. None of these agencies expanded the scope of their ordinances to include employers with less than 500 employees and did not provide for new or additional hours.

On January 5, 2020, the Sonoma County Board of Supervisors directed to staff to bring an urgency ordinance on January 26, 2020, to readopt its ordinance without expansion.

On January 5, the City of San Jose extended and expanded its ordinance to include all employers. The San Jose ordinance did not provide for a new leave bank and it has the lower benefits cap.

Outreach

The Santa Rosa Metro Chamber, Sonoma County Hispanic Chamber of Commerce, Sonoma County Alliance, Los Cien, Downtown Action Organization, Railroad Square Community Benefit District, Sonoma County Go Local Coop, North Coast Builder's Exchange, and Western Builders Association were notified of the study session and the discussion of extending, expanding, or no action related to the ordinance.

FISCAL IMPACT

While there are a number of variables which make costing any potential extension or expansion of the ordinance difficult, as long as employees would not receive a second 80 hours, it is estimated the cost 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 section 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 4, 2021, the Economic Recovery Task Force reviewed and discussed the various policy options outlined in this report, weighing impacts to both employees and employers. The Task Force has no formal recommendation for Council consideration.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 - Ordinance ORD-2020-006

CONTACT

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