

ORDINANCE NO. (6320)

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, TO ESTABLISH SUPPLEMENTAL PAID SICK LEAVE REQUIREMENTS FOR CERTAIN PRIVATE EMPLOYERS FOR COVID-19 RELATED REASONS
URGENCY ORDINANCE: 4/5 VOTE REQUIRED**

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. Findings

- A. On January 31, 2020, the United States Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to the novel coronavirus. The World Health Organization (WHO) has declared the COVID-19 outbreak a public health emergency of international concern, and the Centers for Disease Control and Prevention (CDC) has determined that the virus presents a serious public health threat.
- B. On March 3, 2020, the County of Sonoma Board of Supervisors ratified the declaration of the local health emergency by the Public Health Officer and the proclamation of a local emergency by the Director of Emergency Services that began on March 2, 2020, due to COVID-19, finding that conditions of extreme peril to the safety of persons and property had arisen within the County caused by the threat of COVID-19.
- C. On March 4, 2020, the Governor of the State of California proclaimed a State of Emergency related to COVID-19 throughout the State of California as a result of the threat to the public health and the economy.
- D. On March 17, 2020, the County Health Officer issued Order No. C19-03, directing the County to Shelter-in-Place to mitigate the spread of COVID-19, except as set forth in the Order, to provide or receive certain essential services, engage in certain essential activities, and work for essential businesses and governmental services. Order No. C-19-03 was issued on evidence of increasing occurrence of COVID-19 within the community and the Bay Area, and the need to slow the rate of transmission to protect the most vulnerable and prevent the health care system from being overwhelmed. Since then, subsequent amendments to the Order and new orders have been issued by the County Health Officer.
- E. On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act ("FFCRA") to provide up to eighty (80) hours of emergency paid sick leave, and up to 12 weeks of family medical leave (10 weeks paid), for employees who can't work (or telework) because their minor child's

- school or child care service is closed due to COVID-19. The federal Act provides refundable tax credits that reimburses employers who are subject to the Act dollar-for-dollar for the cost of providing the paid sick and family leave wages to their employees pursuant to the Act. The federal legislation exempts employers with 500 or more employees, and also affords discretion to employers of health care workers and emergency responders in terms of affording such employees the paid sick leave and expanded family and medical leave benefits, should operational needs dictate otherwise. The FFCRA provides in part that small businesses with fewer than fifty (50) employees may potentially obtain a hardship exemption from the obligation to provide paid leave to an employee who requests leave due to school or childcare closures if providing leave to care for a child would jeopardize the viability of the business as a going concern.
- F. On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20, imposing a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities.
 - G. On April 16, 2020, Governor Newsom signed Executive Order N-51-20, which extends paid sick leave benefits for food sector workers impacted by COVID-19.
 - H. On July 1, 2020, due to increasing spread of COVID-19, the State Public Health Officer issued Guidance on Closure of Sections in Response to COVID-19, instructing counties that have been on the State’s “County Monitoring List” for three consecutive days or more to close indoor operations for certain sectors that promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult, in order to further mitigate the spread of the virus.
 - I. On July 10, 11, and 12, 2020, Sonoma County recorded daily case counts exceeding the limits set forth by the State Public Health Officer, and State health officials directed closure of certain businesses and indoor operations for a period of not less than three weeks.
 - J. On July 13, 2020, the Governor announced that certain businesses and indoor operations that promote the mixing of populations beyond households must close statewide, and additionally that Sonoma County must close additional indoor operations such as gyms, places of worship, offices for non-critical businesses, personal care services, and malls.
 - K. The American College of Occupational and Environmental Medicine stated that paid sick leave is recommended to reduce the chances that a worker will come to work with COVID-19, and the CDC’s May 2020 Interim Guidance for

Businesses and Employers recommends that in order to maintain healthy business operations, employers should implement flexible sick leave policies that are consistent with public health guidance.

- L. In the absence of paid sick leave, many workers facing employment and economic insecurity will make the difficult decision to work when they should be quarantining or isolating themselves at home, posing a significant public health risk.
- M. Given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, the County of Sonoma Board of Supervisors is compelled to enact this Urgency Ordinance, which addresses the emergency paid leave coverage gap created by the FFCRA, and which sets forth paid sick-leave requirements for certain employees in the unincorporated areas of the County that are not covered by the FFCRA.
- N. The California Constitution, Article XI, Section 7, vests the County with authority to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws,” and Sections 25123(d) and 25131 of the California Government Code authorize the County to enact ordinances for the immediate preservation of the public peace, health, or safety. Pursuant to the authority set forth in Section 8634 of the Government Code, the Board of Supervisors may promulgate emergency orders and regulations necessary to provide for the protection of life and property. The facts constituting the urgency include the following:

COVID-19 is a pandemic threatening the health and safety of the County's residents, as reflected by increased infection rates, deaths, and the various emergencies declared at the local, state and national levels, and the July 13, 2020 Order of Governor Newsom for counties such as Sonoma to rollback re-openings in order to slow the spread of COVID-19. Immediate efforts to limit the spread of COVID-19 are critical to protecting the health and safety of the County's residents. Efforts to limit the spread of COVID-19 are undermined if individuals feel compelled to continue to work if they are advised to self-quarantine due to COVID-19 exposure or are experiencing symptoms of COVID-19. Workers in Sonoma County are facing significant employment and economic insecurity. Any delay in making available the paid sick-leave benefits provided under this Ordinance could result in the unnecessary spread of COVID-19.

- O. This Ordinance addresses the emergency paid leave coverage gap created by the FFCRA by extending emergency paid leave to employees working in the

unincorporated areas of the County who are employed by businesses with 500 or more employees on a local or national basis within the United States, so that they will be financially better able to stay home and isolate if exposed to COVID-19, or if they are exhibiting symptoms related to COVID-19, or caring for an individual affected by COVID-19.

- P. By increasing employee access to paid leave during the current crisis, this Ordinance will reduce the likelihood that infected employees will report to work, or that any of their infected family members or household members will be out in the community during such period of infection, and will therefore decrease the spread of COVID-19 through interactions with fellow employees or members of the public.
- Q. For the reasons set forth above, this Ordinance is declared by the County of Sonoma Board of Supervisors to be necessary for preserving the health, welfare and safety, and to avoid a current, immediate and direct threat to peace, health, safety and welfare of the community, and the recitals above taken together constitute the Board of Supervisor's statement of the reasons for adopting this Ordinance on an urgency basis.

Section II. Purpose and Intent. By ensuring that employees in the unincorporated areas of Sonoma County are financially able to stay home and isolate if exposed to COVID-19 or are exhibiting symptoms related to COVID-19, this Ordinance will reduce the likelihood that infected employees will report to work, or that any of their infected family members or household members will be out in the community during such period of infection. The Ordinance will therefore decrease the spread of COVID-19 through interactions with fellow employees or members of the public. This urgency Ordinance will also serve to address the current financial crisis of those employees working in the unincorporated areas of the County who are not protected by the federal Families First Coronavirus Response Act, who are struggling to make ends meet due to widespread closures, lack of access to childcare and elder care, and other workplace disruptions, which are likely to continue to affect employees

Section III. Authority and Operative Dates of the Ordinance. This Ordinance is approved pursuant to Sections 25123(d) and 25131 of the California Government Code, allowing for ordinances for the immediate preservation of the public peace, health, or safety, as well as Section 8634 of the Government Code, which authorizes ordinances necessary during a local emergency to provide for the protection of life and property. This Ordinance is enacted for the immediate preservation of the public peace, health, or safety, and as an urgency ordinance enacted pursuant to Sections 25123(d) and 25131 of the California Government Code. The ordinance shall be effective immediately upon its introduction and passage by a 4/5 vote. This Ordinance shall run concurrently with the FFCRA and shall sunset on December 31, 2020, but shall be extended by any

extensions of the FFCRA. Employers are not required to cash out any the unused Supplemental Paid Sick Leave benefits to Employees.

Section IV. Definitions.

For the purposes of this Ordinance, the following words, terms, and phrases have the meanings given to them in this section:

1. “Employer” means any person, defined in Section 18 of the California Labor Code, as “any person, association, organization, partnership, business trust, limited liability company, or corporation,” who directly or indirectly 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 Employees. This Ordinance applies only to Employers with 500 or more employees within the United States on a local or national basis, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. This Ordinance and the definition of Employer do not apply to federal, state, or local government agencies.
2. “Employee” means an individual, regardless of immigration status, employed by an Employer and who has worked for the employer for more than two (2) hours within the geographic boundaries of unincorporated Sonoma County. For purposes of this Ordinance, 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. For purposes of determining Employee status, applicable California law shall apply, including, but not limited to Labor Code section 2750.3
3. “Emergency Responder” and “Health Care Provider” are given the same meanings as set forth in the FFCRA, and its rules, regulations and other guidance issued by the U.S. Department of Labor regarding the FFCRA.
4. “Individual” or “Care for an individual,” for the purposes of this Ordinance means an Employee's immediate family member, a person who regularly resides in the Employee's home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined, or whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation. For this purpose, the term “Individual” does not include persons with whom the Employee has no personal relationship. The meaning of these terms is intended to be consistent with that set forth in the FFCRA, its rules, regulations, and other guidance issued by the U.S. Department of Labor regarding the FFCRA.

“Supplemental Paid Sick Leave” means time an Employee is compensated by an Employer for COVID-19 related leaves as described in this Ordinance.

Section V. Paid Sick Leave Ordinance

1. Supplemental Paid Sick Leave Entitlements.

- a. *Covered and Non-Covered Employers.* This Ordinance applies to Employers that have more than 500 employees either local or nationally. It does not apply to Employers that are already subject to the FFCRA, including, but not limited to, any government Employers, and Employers with fewer than five hundred (500) Employees.
- b. *Applicability to Health Care Providers and Emergency Responders.* Employers of Health Care Providers and Emergency Responders in the unincorporated areas of the County are required to furnish the Supplemental Paid Sick Leave benefits to such Employees in all instances where the leave is taken when a Health Care Provider or Emergency Responder has COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis, or is subject to a government quarantine or isolation order or a health care provider’s advice to self-quarantine, regardless of whether taking leave for such purposes creates an operational hardship to the Employer. Supplemental Paid Sick Leave Benefits may also be taken by Health Care Providers and Emergency Responders employed by Employers in the unincorporated areas of the County when the purpose of the Leave is to Care for an Individual who has COVID-19 or is experiencing symptoms of COVID-19, or where the Individual is subject to a government quarantine or isolation order or a health care provider’s advice to self-quarantine, regardless of whether taking Leave for such purposes creates an operational hardship to the Employer.

Supplemental Paid Sick Leave Benefits may also be taken by Health Care Providers and Emergency Responders in the unincorporated areas of the County when the purpose of the leave is to provide Care for an Individual whose senior care provider or whose school or childcare provider is closed or is unavailable due to COVID-19 reasons.

- c. *Amount of Paid Sick Leave Benefits.* An Employee who has worked a minimum of two (2) hours for an Employer is entitled to Supplemental Paid Sick Leave hours as follows:
 - i. A full-time Employee who is normally scheduled to work forty (40) or more hours per week shall receive up to eighty (80) hours of Supplemental Paid Sick Leave.

ii. A part-time Employee who is normally scheduled to work fewer than forty (40) hours per week shall receive Supplemental Paid Sick Leave in an amount no greater than the Employee's average number of work hours in a two-week period, calculated over the past six (6) months.

iii. These paid sick leave hours are available beginning the effective date of this Ordinance, continuing through the sunset date of the FFCRA, December 31, 2020. This Ordinance shall be automatically extended to the extent the FFCRA is extended.

d. *Permissible Basis for Receipt of the Benefit.* An Employer shall provide Supplemental Paid Sick Leave upon the written (includes, but is not limited to, electronic mail and text) request of an Employee if the Employee cannot work, or telework, because:

- i. The Employee has been advised by a health care provider to isolate or self-quarantine to prevent the spread of COVID-19;
- ii. The Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19;
- iii. The Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- iv. The Employee needs to care for an Individual who is subject to a federal, state, or local quarantine or isolation order related to COVID19, or has been advised by a health care provider to self-quarantine related to COVID-19, or is experiencing COVID 19 symptoms and is seeking a medical diagnosis; or
- v. The Employee takes time off work because the Employee needs to provide care for an Individual whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation.

Supplemental Paid Sick Leave benefits are not available to Employees who are able to work from home, and who are not otherwise eligible for benefits under this Chapter.

e. *Rate of Pay and Pay Cap.* The Supplemental Paid Sick Leave hours shall be paid at not less than the Employee's regular rate of pay, as specified in the FFCRA, its rules, regulations and other guidance issued by the U.S. Department of Labor regarding the FFCRA, subject to the cap set forth below. In no event shall the Supplemental Paid Sick Leave amount paid to an Employee exceed \$511 per day and \$5,110 in the aggregate, regardless of the reason for the Leave. Employees of joint Employers are only entitled to the total aggregate amount of leave specified for Employees of one Employer.

- f. *Documentation and Replacements.* Employers may only take reasonable measures to confirm an Employee's eligibility for Supplemental Paid Sick Leave, in accordance with the limitations set forth in the FFCRA or in the applicable regulations or guidance issued by the United States Department of Labor. An Employer may require Employees to follow reasonable notice procedures only for foreseeable absences. Employers may require Employees to identify the basis for which the Employee is requesting leave under the Ordinance, but cannot require Employees to furnish a doctor's note or other supporting documentation. Employers are prohibited from requiring Employees to find or confirm a replacement as a condition of obtaining Leave under the Ordinance.
- g. *Coexistence with Other Available Forms of Leave.* The total number of hours of Supplemental Paid Sick Leave to which an Employee is entitled pursuant to this Ordinance shall be in addition to any paid sick leave that may be available to the Employee under California Labor Code Section 246, as well as any preexisting paid time off (vacation, sick and/or PTO) provided to Employees prior to March 16, 2020, subject to the below potential offsets. An Employer may not require an Employee to use any other paid or unpaid leave, sick pay, paid time off, or vacation time provided by the Employer to the Employee before the Employee uses Supplemental Paid Sick Leave.
- h. *Employer Offsets.* To the extent an Employee has at least eighty (80) hours of accrued paid sick leave benefits as of the date of this Ordinance or at least one hundred sixty (160) hours of a combination of paid sick leave, vacation and PTO paid time off benefits ("Accrued Leave Benefits"), the obligation to provide Supplemental Paid Sick Leave under this Ordinance shall be deemed to be satisfied. To the extent accrued paid sick leave benefits afforded Employees as of the date of this Ordinance are less than eighty (80) hours, or Accrued Leave Benefits are less than one hundred sixty (160) hours, an Employer is required to furnish Supplemental Paid Sick Leave to the extent of such deficiency.
- i. *Enforcement.* An Employee claiming a violation of this Ordinance 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 this Ordinance; (2) back pay and Supplemental Paid Sick Leave unlawfully withheld, calculated at the Employee's average rate of pay; and/or (3) such other legal or equitable relief the Court may deem appropriate. If an Employee is the prevailing party in any legal action taken pursuant to this Ordinance, the Court may award reasonable attorney's fees and costs as part of the Employee's recovery. This

Ordinance does not create a legally enforceable right by any member of the public against the County of Sonoma.

- j. *Retaliatory Action Prohibited.* No Employer shall discharge, reduce in compensation, or otherwise discriminate against any Employee for opposing any practice proscribed by this Ordinance, for requesting to use or actually using Supplemental Paid Sick Leave under this Ordinance, for participating in proceedings related to this Ordinance, for seeking to enforce his or her rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.
- k. *Notice and Recordkeeping Requirements.* Employers must provide notice to Employees of their rights under this Ordinance by posting a notice in English and Spanish in the workplace, on any intranet or app-based platform or via email. Each Employer shall also maintain a record of each Employee's name, the hours worked, and pay rate for at least a three-year period.
- l. *Preemption and Severability.* Nothing in this Ordinance shall be interpreted or applied to create any power or duty in conflict with any federal or State law. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.
- m. *No Waiver of Rights.* Any prospective waiver by an Employee of any or all of the provisions of this Ordinance shall be deemed contrary to public policy and shall be void and unenforceable.
- n. *Other Legal Requirements.* This Ordinance provides minimum requirements pertaining to public health emergency leave, and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by Employees of public health emergency sick leave, whether paid or unpaid, or that extends other protections to Employees.

The full text of this Ordinance will be published once before the expiration of 15 days after its passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced and passed on the 18th day of August, 2020, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Rabbitt: Absent Zane: Aye Gore: Aye Hopkins: Aye Gorin: Aye

Ayes: 4 Noes: 0 Absent: 1 Abstain: 0

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors