

FYI[®]

For Your Information[®]

Los Angeles expands COVID vaccine-related paid sick leave

On June 24, Los Angeles Mayor Eric Garcetti revised an earlier emergency order and issued a new order requiring employers to provide paid time off for employees to receive or recover from COVID-19 vaccination.

Volume 44

Issue 25

July 16, 2021

Authors

Nancy Vary, JD

Abe Dubin, JD

Background

On March 27, 2020, the Los Angeles City Council passed an ordinance that would have required employers to provide up to 80 hours of COVID-related supplemental sick leave, with limited exceptions for emergency and health services personnel. On April 7, 2020, Los Angeles Mayor Eric Garcetti suspended the ordinance and issued a Supplemental Paid Sick Leave Due to COVID-19 Order under city's emergency authority.

The emergency order limited the supplemental paid sick leave requirement to employers with either: (i) 500 or more employees within the City of Los Angeles; or (ii) 2,000 or more employees within the United States. It entitled employees to up to 80 hours of COVID-19 supplemental paid sick leave if they were employed for 60 days by a covered employer, performed any work within the city, and were unable to work or telework for certain COVID-related reasons. Under the emergency order, employees could use the supplemental leave:

- For their own COVID-19 infection, isolation or self-quarantine related to COVID-19
- To care for a family member who is not sick but who public health officials or healthcare providers have required or recommended isolation or self-quarantine
- To care for a family member whose senior care provider, school or childcare provider is closed — if unable to secure a reasonable alternative caregiver
- Because the employee is at least 65 years old or has certain serious health conditions that put them at increased risk

In addition to emergency and health services personnel, the emergency order exempted certain parcel delivery employees, employees whose employer had a paid leave or paid time off policy providing at least 160 hours of paid leave annually, and employees covered by existing collective bargaining agreements that contain COVID-19 related sick leave provisions. Also exempted were government agencies, certain new businesses, and businesses and organizations that were closed or not operating for at least 14 days due to an emergency order related to the pandemic.

New and revised paid sick leave orders

On June 24, Los Angeles Mayor Eric Garcetti revised the emergency order and issued a new paid sick leave order for vaccine-related leaves.

Revised emergency order

Like the original emergency order, the revised supplemental paid sick leave order applies to employers with either 500 or more employees in Los Angeles or 2,000 or more employees nationally. The revisions include two important changes that allow:

1. Employees to use supplementary paid sick leave to get vaccinated — including time travelling to and from an appointment — and to recover from the vaccine
2. Employers to require employees to verify their receipt of a COVID-19 vaccine despite the general prohibition against requiring a doctor's note or other documentation to substantiate leave use

The revised order applies from June 24 until two calendar weeks after the local COVID-19 emergency period ends.

New COVID-vaccine leave order

Unlike the revised emergency order, the Vaccine Paid Sick Leave Due to COVID-19 Order (new order) applies to all private employers regardless of size. Public employers are exempt. The definition of covered employee is largely the same as under the emergency order. The new order also contains a carve-out for employees covered by existing collective bargaining agreements (CBAs) that provide vaccine leave. However, an express waiver must be included when those CBAs expire or open for renegotiation to avoid compliance obligations.

Paid time off

The new order requires employers to provide covered employees with paid time off to get the COVID-19 vaccine — including time spent traveling to and from an appointment — and to recover from vaccine-related side effects. Employers must provide full-time employees with up to four hours of leave to obtain each vaccine injection, and up to eight hours of leave to recover from any vaccination-related side effects that prevent the employee from being able to work or telework. Part-time employees are entitled to a prorated amount. While employers must allow covered employees to use vaccine leave upon request, they can ask employees for written proof that they received a vaccine.

Employers must pay non-exempt employees at their normal rate of pay, Los Angeles minimum wage, or the employee's average hourly pay for the preceding 60 days (excluding overtime), whichever rate is highest. Employers must pay exempt employees in the same manner as they calculate wages for other forms of paid leave. The order caps pay at \$511 per day (or \$255.50 for each four-hour period) or \$1,022 in the aggregate, unless the federal government establishes a higher cap.

Generally, vaccine leave is in addition to other paid leave available to an employee, and employers generally cannot require employees to use other paid or unpaid leave before using vaccine leave provided under the new order. However, employers with at least 26 employees need only provide additional vaccine leave to employees who have exhausted all available California supplemental paid sick leave (SPSL) or leave under the city's supplemental paid sick leave order.

Retroactive application

The new order is retroactive to January 1 and will remain in effect until September 30. However, employees who are on vaccine leave on that date can take the full amount of leave to which they would otherwise be entitled under the new order.

Employees are entitled to retroactive payment upon request if they took, on or after January 1, what would have been qualifying leave under the new order had it been in effect. Similarly, employers that required employees to use vacation, paid or unpaid time off, or sick leave benefits (other than California SPSL or leave under the emergency order) must reclassify and restore the leave taken as vaccine leave unless it qualifies as an offset. Any reclassification or restoration must be reflected on the employee's next paystub along with the remaining hours of vaccine leave.

Offsets

Employers that provide another supplemental benefit in addition to any other accrued leave entitlement for leave taken on or after January 1, that is payable for the same vaccine-related reasons, and is paid in an amount that equals or exceeds what the new order requires, can count those supplemental benefit hours toward the amount of vaccine leave hours they must provide.

In closing

Employers should update their existing policies, practices, and procedures as needed to ensure compliance with the orders and all applicable supplemental leave requirements.

COVID-19 Compliance check-in

Buck's latest version of the **COVID-19 Compliance check-in** is updated to reflect the retirement, health, labor and employment issues facing employers now. Review the checklist to help your team manage priorities and determine next steps.

Produced by the Compliance Consulting Practice

The Compliance Consulting Practice is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, training, and knowledge management. For more information, please contact your account executive.

You are welcome to distribute *FYI*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.