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## **SAN DIEGO CITY COUNCIL EXPANDS PAID SICK LEAVE AND IMPLEMENTS EMPLOYEE RECALL & RETENTION POLICIES**

On September 8, 2020, The San Diego City Council passed two ordinances to protect vulnerable workers amidst the pandemic, **effective immediately**. The COVID-19 Supplemental Paid Sick Leave Ordinance requires large companies employing more than 500 workers to provide supplemental paid sick leave for employees. The COVID-19 Building Service and Hotel Worker Recall Ordinance requires commercial property businesses, hotels, and event centers to recall laid-off employees by seniority when business activity resumes and to retain employees in the event that the business changes ownership during the pandemic.

### *Supplemental Paid Sick Leave*

The COVID-19 Supplemental Paid Sick Leave Ordinance is meant to assist those workers left without the paid sick leave benefit under the federal Emergency Paid Sick Leave Act, which exempts employers with 500 or more employees from coverage. Several employer exemptions are provided, including emergency responders, healthcare providers, global delivery services, governmental agencies, and employers that provide at least 160 hours of annual paid leave. “Covered Employers” under Section 5110[2](b) of the federal Families First Coronavirus Response Act [“FFCRA”] are likewise excluded for purposes of this ordinance.

Full-time employees are entitled to 80 hours of paid sick leave, while part-time employees are entitled to the average number of hours they normally work over a two-week period, not to exceed \$511 per day. An employee may request time off to care for themselves, a family member, or a household member for COVID-19 related reasons and may elect for intermittent increments of one-hour. An employer may not require documentation of the employee to use supplemental paid sick leave and may not retaliate against an employee for requesting or using supplemental paid sick leave.

Questions? Contact Stokes Wagner.

The ordinance is **in effect until December 31, 2020**, unless otherwise extended by City Council, or unless the FFCRA is extended by Congress, in which case, the ordinance will remain in effect as long as the FFCRA is in effect.

### *Recall and Retention*

The COVID-19 Building Service and Hotel Worker Recall Ordinance seeks to ensure that workers in the building service, hospitality, and travel-related industries who have been discharged, laid off, or furloughed enjoy a right to their previous jobs when business activity resumes in order to aid economic recovery and reduce the demand on city-funded social services.

Employers must offer its laid-off employees, in writing, all jobs which the employee is qualified for, with preference given to employees with the greatest length of service. A laid-off employee has 3 business days to respond to the offer. Laid-off employees include those who were laid off on or after March 4, 2020, due to a government shutdown order, lack of business, a reduction in force, or any other economic, non-disciplinary reason. The ordinance requires that laid-off employees be employed for six months or more in the 12 months preceding March 4. For event center employees, the requirement is reduced to three months or more. Laid-off employees do not include managers, supervisors, or confidential employees.

An employer is also required to maintain records pertaining to the recall requirements of each laid-off employee for at least 3 years. Employers subject to the recall ordinance are hotels with more than 200 rooms, privately-owned event centers larger than 50,000 square feet or 5,000 seats, and commercial properties with at least 25 janitorial, maintenance or security service employees.

The retention section of the ordinance applies to commercial property businesses and hotels that change ownership during the pandemic. The ordinance requires the original employer to provide the successor business employer with a list of eligible employees within 15 days of the transfer and to hire from that list for at least 6 months after the transfer. The successor employer must make offers to eligible employees for a 90-day transition period, in which employees can generally only be dismissed for cause, with some exceptions. At the end of the transition period, the employer must provide a written performance evaluation for each eligible employee and consider offering continued employment to those with satisfactory performance.

Eligible employees include those who have worked for the original employer on or after March 4, 2020, for 6 months or more, and prior to the execution of the change in ownership. Managers, supervisors, and confidential employees are ineligible.

September 15, 2020

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The ordinance is in effect for 6 months unless California Assembly Bill 3216 is chaptered, in which case, **it will be repealed on January 1, 2021**, unless extended by resolution by City Council.

For the full text of the Supplemental Paid Sick Leave Ordinance, click [here](#). For the full text of the Building Service and Hotel Worker Recall Ordinance, click [here](#).

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