

San Francisco Public Health Emergency Leave Ordinance
FREQUENTLY ASKED QUESTIONS

September 30, 2022

The Public Health Emergency Leave Ordinance (“Ordinance”) requires certain employers to provide employees with paid leave for specified reasons related to Public Health Emergencies. The San Francisco Office of Labor Standards Enforcement administers and enforces the Ordinance’s paid leave requirements.

Operative Date

1. Q: What is the effective date of the Ordinance?

A: The Public Health Emergency Leave Ordinance is operative as of October 1, 2022.

Scope of Ordinance

2. Q: Which Employers are covered by the Ordinance?

A: Employers with 100 or more employees worldwide (“Employers”) must comply with the Ordinance for their covered San Francisco employees.

Non-profit organizations are not covered if the majority of their annual revenue is program service revenue that is not unrelated business taxable income under 26 U.S.C. § 512, **and** the non-profit organization does not engage in Healthcare Operations, as defined below.

“Healthcare Operations” means the provision of diagnostic and healthcare services and devices including, without limitation, hospitals, medical clinics, diagnostic testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.

3. Q: In determining if an Employer is covered by the Ordinance, are all of its employees counted, including those who work outside of San Francisco?

A: Yes. For the purpose of calculating Employer size, all persons performing work for the

Employer worldwide are counted.

4. Q: What if the number of employees that an Employer employs fluctuates above and below 100?

A: If the number of employees fluctuates above and below 100 over the course of a year, calculate business size based upon the average number of employees per pay period during the preceding calendar year.

5. Q: Are employees of private sector employers at the San Francisco International Airport (SFO) covered by the Ordinance?

A: No. The Ordinance covers employees who are employed within the geographic boundaries of San Francisco, which does not include SFO.

6. Q: Are employees of private sector employers at the Presidio covered by the Ordinance?

A: No. The Ordinance does not cover private businesses located in “federal enclaves” such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA).

7. Q: Are franchises covered by the Ordinance?

A: In general, individually-owned franchises are not covered by the Ordinance unless the number of employees across all businesses owned by the franchise owner is equal to at least 100 employees.

8. Q: Which party is responsible for providing Public Health Emergency Leave when a worker is supplied by a staffing agency?

A: The person or business that employs or exercises control over the wages, hours, or working conditions of the worker is responsible.

9. Q: Which Employees are covered by the Ordinance?

A: Any person providing labor or services for remuneration who is an employee under California Labor Code Section 2775, including a part-time and temporary employee who performs work as an employee within the geographic boundaries of the City, is an “Employee” covered by the Ordinance.

10. Q: Are Employees of “essential businesses” as defined by public health orders covered by the Ordinance?

A: Yes – but an Employer of an Employee who is a Health Care Provider or an Emergency Responder (as defined in FAQ 11 below) may elect to limit the Employee’s use of Public Health Emergency Leave, as outlined in FAQ 22 below.

11. Q: Who is a Health Care Provider and Emergency Responder for potential limits on employee leave?

A: These terms are defined under the Ordinance consistent with 29 C.F.R. 825.102, as follows:

Health Care Provider means:

A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary to be capable of providing health care services.

Others “capable of providing health care services” include only:

Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

The phrase “authorized to practice in the State” means that the provider must be authorized to diagnose and treat physical or mental health conditions.

An **Emergency Responder** is an Employee whose work involves emergency medical services, including but not limited to emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, 911

operators, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a Public Health Emergency.

12. Q: Does the Ordinance cover undocumented Employees?

A: Yes. All Employees who work in San Francisco – whether or not they are legally authorized to work in the United States – are covered by the Ordinance. OLSE will process an Employee’s claim without regard to the Employee’s immigration status. Employees filing a claim with OLSE will not be questioned about their immigration status.

13. Q: Does the Ordinance require Employers to provide Public Health Emergency Leave to independent contractors?

A: No. The Ordinance applies to Employees. However, merely labeling someone as an “independent contractor” does not make it so. Consistent with California law, whether a person is an employee or independent contractor is a fact-specific inquiry that is determined by a variety of factors.

For more information on how the State of California reviews issues relating to independent contractor status in wage and hour cases, see the California Labor & Workforce Development Agency [Employment Status Portal](#).

Amount of Public Health Emergency Leave

14. Q: When is Public Health Emergency Leave available to Employees?

A: Public Health Emergency Leave is available to Employees to use during a Public Health Emergency on the operative date of the Ordinance, October 1, 2022, regardless of how long the Employee has been employed, subject to the parameters outlined in FAQ 16 below.

15. Q: Are the Ordinance’s requirements retroactive?

A: No. The Ordinance’s requirements are operative on October 1, 2022.

16. Q: How much Public Health Emergency Leave is available to employees?

A: As of October 1, 2022, Employees who are **full-time regular or fixed schedule Employees**, are entitled to the number of hours over a one-week period that the Employee regularly works or takes paid leave, not to exceed 40 hours of Public Health Emergency Leave through December 31, 2022. As of January 1, 2023, full-time

Employees must be allocated the number of Paid Health Leave hours equal to the number of hours over a two-week period that the Employee regularly works or takes paid leave, not to exceed 80 hours per year.

Example: Employee was hired in May 2022 and regularly works 36 hours per week. On October 1, 2022, Employee is entitled to 36 hours of Paid Health Emergency Leave through December 31, 2022. On January 1, 2023, Employee's entitlement of Paid Health Emergency Leave increases to 72 hours through December 31, 2023. Note that the Employer is not required to carry over an Employee's unused Public Health Emergency Leave from year to year.

As of October 1, 2022, Employees who are **part-time Employees or whose weekly work hours vary**, are entitled to the number of Public Health Emergency Leave hours equal to the average number of hours over a one-week period that the Employee was scheduled over the previous calendar year or since the Employee's start date if after the beginning of the previous calendar year, including hours for which the Employee took leave of any type, not to exceed 40 hours. As of January 1, 2023, part-time Employees or those with varying work hours must be allocated the number of Paid Health Leave hours equal to the average number of hours over a two-week period that the Employee worked or took paid leave during the previous calendar year or since the Employee's start date if after the beginning of the previous calendar year, not to exceed 80 hours.

Example: Employee was hired on August 1, 2022 and works a varying number of hours per week, ranging from 15 to 25. To calculate the Employee's allotment of Paid Health Emergency Leave to allocate on October 1, 2022, the Employer should add the number of hours worked per week from August 1 through October 1 and divide by the number of weeks (nine weeks). On January 1, 2023, the Employer will average the hours worked over a two-week period since August 1, 2022 and allocate that amount of Paid Health Emergency Leave. The Employer is not required to carry over an employee's unused hours from the previous year.

If an Employee is not employed on October 1, 2022 or on January 1 of a calendar year thereafter, the Employer shall allocate Public Health Emergency Leave on the start date of the first Public Health Emergency that begins during the Employee's employment as follows:

Full time regular or fixed schedule Employees shall be allocated a number of hours equal to the number of hours worked over a two-week period the Employee regularly works or takes paid leave, not to exceed 80 hours. If an Employee is hired between October 2, 2022 and December 31, 2022, the allocation shall be equal to the number of hours over a one-week period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

Part-time or Employees with varying work hours shall be allocated a number of hours equal to the average number of hours over a two-week period that the Employee worked or took paid leave during the previous six months or since the Employee's start date if the Employee has been employed for fewer than six months, not to exceed 80

hours. For the remainder of 2022, when an Employee is hired between October 2, 2022 and December 31, 2022, the allocation shall be equal to the average number of hours over a one-week period that the Employee worked or took paid leave since the Employee's start date, not to exceed 40 hours.

Employees shall not be entitled to more than 80 hours of Public Health Emergency Leave in a year. The entitlement encompasses all Public Health Emergencies that take place in the calendar year.

17. Q: Are Employers required to provide Public Health Emergency Leave in addition to paid sick leave provided under the San Francisco Paid Sick Leave Ordinance (PSLO)?

A: Yes. Public Health Emergency Leave must be made available to Employees in addition to any paid time off, including paid sick leave under the San Francisco Paid Sick Leave Ordinance, that the employer offered or provided to Employees on or before October 1, 2022.

18. Q: Are Employers required to provide Public Health Emergency Leave in addition to paid sick leave provided under California COVID-19 Supplemental Paid Sick Leave law?

A: Employers that provide paid leave under California COVID-19 Supplemental Paid Sick Leave law are permitted to offset that leave from the required Public Health Emergency Leave entitlement. The amount of Public Health Emergency Leave that an Employer must provide is reduced for every hour of California Supplemental Paid Sick Leave that the Employee takes after October 1, 2022. If an Employer provided California Supplemental Paid Sick Leave that an Employee used prior to October 1, 2022, that amount does not offset the requirement to allocate Paid Health Emergency Leave as outlined above. Employers should be aware that the California COVID-19 Supplemental Paid Sick Leave covers different uses than San Francisco's Public Health Emergency Leave.

Consistent with the [California Labor Commissioner's administrative guidance](#) (FAQs 18 & 19), employers that provide supplemental sick leave to comply with both State law and the Public Health Emergency Leave Ordinance must provide leave at the higher rate of pay.

19. Q: May Employers provide bonuses or raise Employee wages in lieu of providing Public Health Emergency Leave?

A: No. The provision of Public Health Emergency Leave under the Ordinance may not be waived unless, per Section 13.10 of the Ordinance, it is expressly waived through a bona fide collective bargaining agreement in clear and unambiguous terms.

Public Health Emergency Leave Use

20. Q: For what purposes can Employees use Public Health Emergency Leave?

A: Except as provided for in FAQ 22 below, an Employee may use Public Health Emergency Leave to the extent that the Employee is unable to work (either at the Employee's customary place of work or telework) during a Public Health Emergency due to any of the following:

- (1) The recommendations or requirements of an individual or general federal, state, or local health order (including an order issued by the local jurisdiction in which an Employee or an Employee who is caring for a family member who resides) related to the Public Health Emergency.
- (2) The Employee or a family member of an Employee for whom the Employee is caring for has been advised by a Healthcare Provider to isolate or quarantine.
- (3) The Employee or Family Member of an employee for whom the employee is caring for is experiencing symptoms of and seeking a medical diagnosis, or has received a positive medical diagnosis, for a possible infectious, contagious, or communicable disease associated with the Public Health Emergency.
- (5) The Employee is caring for a Family Member if the school or place of care of the family member has been closed, or the care provider of such Family Member is unavailable, due to the Public Health Emergency.
- (6) An Air Quality Emergency, if the Employee is a member of a Vulnerable Population and primarily works outdoors.

21. Q: Who qualifies as a Family Member under the Ordinance?

A: "Family Member" under the Ordinance is defined as it is under the Paid Sick Leave Ordinance, (PSLO) Labor and Employment Code § 11.4(a), as a: child; parent; legal guardian or ward; sibling; grandparent; grandchild; spouse or registered domestic partner under any state or local law; and Designated Person. These relationships include not only biological relationships but also relationships resulting from adoption, step-relationships, and foster care relationships.

"Child" also includes a child of a domestic partner and a child of a person standing in loco parentis.

"Parent" also includes a person who stood in loco parentis when the employee was a minor child, and a person who is a biological, adoptive, or foster parent, or guardian of the employee's spouse or registered domestic partner.

"Designated person." If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The PSLO requires that the opportunity to make such a designation shall be extended to the employee no later than the date on which the

employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 12W.3(a) and annually thereafter, with a window of 10 work days for the employee to make this designation. All “designated persons” under the PSLO shall automatically be deemed “designated persons” for the purposes of the Ordinance.

22. Q: For what purposes must Employers provide Health Care Providers and Emergency Responders Public Health Emergency Leave?

A: Employers of an Employee who is a Health Care Provider or an Emergency Responder (as defined in FAQ 11 above) may elect to limit such an Employee’s use of Public Health Emergency Leave to the extent that the Employee is unable to work (either at the employee’s customary place of work or telework) due to any of the following:

- (1) The Employee has been advised by a Healthcare Provider to isolate or quarantine.
- (2) The Employee is experiencing symptoms of and is seeking a medical diagnosis, or has received a positive medical diagnosis, for a possible infectious, contagious, or communicable disease associated with the Public Health Emergency and does not meet federal, state, or local guidance to return to work.
- (3) An Air Quality Emergency, if the Employee is a member of a Vulnerable Population, primarily works outdoors, and has been advised by a Healthcare Provider not to work during an Air Quality Emergency.

23. Q: Does the Ordinance require Employers to permit Employees to use Public Health Emergency Leave when they are working outside of San Francisco?

A: No.

24. Q: Does the Ordinance require Employers to permit Employees to use Public Health Emergency Leave for hours they are not scheduled to work?

A: No.

25. Q: Can an Employer require an Employee to use an alternative school or place of care for a Family Member if the Employee seeks to use Public Health Emergency Leave when the Family Member’s school or place of care has been closed or is unavailable due to the Public Health Emergency?

A: No. Employees may choose to use an alternative school or place of care for a Family Member in lieu of using Public Health Emergency Leave, but the Employer may not require it.

26. Q: Can Employers require advance notice for an Employee’s use of Public Health Emergency Leave?

A: Employers may require Employees to comply with reasonable notice procedures, but only when the need for Public Health Emergency Leave is foreseeable.

27. Q: What verification of Public Health Emergency Leave may Employers require?

A: An Employer may require a doctor's note or other documentation to confirm an Employee's status as a member of a Vulnerable Population, if that Employee uses Public Health Emergency Leave for a use inapplicable to an Employee who is not a member of a Vulnerable Population. In other words, if an Employee uses Public Health Emergency Leave for an Air Quality Emergency, an Employer may require verification that the Employee is a member of a Vulnerable Population. An Employer may not otherwise require the disclosure of health information for use of Public Health Emergency Leave.

28. Q: Can an Employer require an Employee using Public Health Emergency Leave to find a replacement worker?

A: No. An Employer may not require, as a condition of an Employee's taking Public Health Emergency Leave, that the Employee search for or find a replacement worker to cover the hours during which the Employee is on Public Health Emergency Leave.

29. Q: Can an Employer require its Employees to take off the full day to use Public Health Emergency Leave?

A: No. Employers may not require, as a condition of an employee's taking Public Health Emergency Leave, that the Employee take the leave in increments of more than one hour.

30. Q: How many hours of Public Health Emergency Leave may an Employee use on days when the Employee is scheduled to work more than 8 hours (i.e., when the employee is scheduled to work overtime hours)?

A: An Employee may use Public Health Emergency Leave for all hours the Employee is scheduled to work, including regular and overtime hours. However, all hours would be paid to the Employee at the regular sick leave rate of pay.

Separation from Employment

31. Q: What constitutes a "separation from employment" under the Ordinance?

A: In determining whether or not there has been a "separation from employment" under the Ordinance, OLSE will consider all relevant circumstances including, but not limited to, whether an employer has demonstrated compliance with provisions of the [California Labor Code](#) and [California Unemployment Insurance Code](#).

32. Q: Are Employees entitled to use Public Health Emergency Leave after a separation of employment (e.g., layoff, quit, retirement)?

A: No. Upon an Employee's separation from employment, that person is no longer an employee of that employer.

33. Q: Are Employers required to pay out unused Public Health Emergency Leave upon separation of employment?

A: No. Upon an employee's separation from employment, an employer is no longer obligated to provide or pay for any Public Health Emergency Leave not used prior to separation.

If an employee separates from an employer for any reason and is rehired by the employer within one year from the date of separation, unused Public Health Emergency Leave shall be reinstated. The employee shall be entitled to use the unused Public Health Emergency Leave upon rehiring.

Payment of Public Health Emergency Leave

34. Q: How should Employers calculate the Public Health Emergency Leave rate of pay?

A: Public Health Emergency Leave must be compensated in the same manner as paid sick leave under the PSLO, Labor and Employment Code § 11.3(h), which provides two options for non-Exempt Employees. Employers may calculate Public Health Emergency Leave for non-Exempt Employees using the regular rate of pay for the workweek in which the employee uses Public Health Emergency Leave, whether or not the employee works overtime in that week. Alternatively, the employer may calculate Public Health Emergency Leave by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Public Health Emergency Leave for Exempt Employees must be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

In no circumstances may Public Health Emergency Leave be provided at less than the San Francisco minimum wage at the time taken.

35. Q: What is the Public Health Emergency Leave rate of pay for an Employee who has two jobs at different pay rates for the same Employer (or an Employee whose rate of pay fluctuates for the same job)?

A: For an Employee who has two jobs at different pay rates for the same Employer, or for an Employee whose rate of pay fluctuates for the same job, the Employer shall reimburse the Employee at the Employee's average hourly rate of pay for the 90 days prior to the date upon which the leave is taken.

36. Q: Are tips included when calculating the Public Health Emergency Leave rate of pay for tipped Employees?

A: No. The Public Health Emergency Leave rate of pay is based only upon compensation paid by the Employer.

37. Q: If an Employer provides benefits on an hourly basis, is the Employer required to provide the same benefits when its Employees are using Public Health Emergency Leave hours?

A: Yes.

38. Q: When must Employees be paid for Public Health Emergency Leave?

A: Public Health Emergency Leave must be paid no later than the payday for the next regular payroll period after the Public Health Emergency Leave was taken by the Employee.

39. Q: Are Employers required to list an Employee's Public Health Emergency Leave balance on the Employee's pay stub?

A: On the written notice that an Employer is required to provide under Section 246 (i) of the California Labor Code, an Employer must state the amount of Public Health Emergency Leave that is available to the Employee under this law. If an Employer provides unlimited paid leave or paid time off to an Employee, the Employer may indicate on the notice or the Employee's itemized wage statement "unlimited."

Employers may provide the Public Health Emergency Leave balance either on the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

This requirement shall apply only to Employers that are required by state law to provide such notice to Employees regarding paid sick leave available under California law.

Notice and Posting

40. Q: Are Employers required to post a notice informing Employees of their rights under the Ordinance?

A: Yes. OLSE has published the Public Health Emergency Leave notice on its website, and Employers must provide the notice to employees in a manner calculated to reach all employees: by posting in a conspicuous place at the workplace or job site, and, where feasible, via electronic communication, and/or by posting in a conspicuous place in an Employer's web-based or app-based platform. Every employer shall provide the notice in English, Spanish, Chinese, Filipino, and any other language spoken by more than 5% of the San Francisco workforce.

The Public Health Emergency Leave notice is available at www.sfgov.org/olse.

Employer Records

41. Q: What records do Employers need to retain to be in compliance with the Ordinance?

A: Employers must retain records documenting hours worked by Employees and Public Health Emergency Leave taken by Employees, for a period of four years, and must allow the Agency access to such records, with reasonable notice, to monitor compliance with the requirements of this Article 13. When an issue arises as to an Employee's entitlement to Public Health Emergency Leave under this Article, if the Employer does not maintain or retain accurate and adequate records documenting hours worked by the Employee and Public Health Emergency Leave taken by the Employee or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer has violated this Article, absent clear and convincing evidence otherwise.

Exercise of Rights Protected; Retaliation Prohibited

42. Q: Can an Employer have an absence control policy that may lead to discipline, discharge, demotion, suspension, or any other adverse action for an Employee's use of Public Health Emergency Leave?

A: No. It is unlawful for an Employer absence control policy to count Public Health Emergency Leave taken under the Ordinance as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

43. Q: Does the Ordinance prohibit retaliation against an Employee for using Public Health Emergency Leave?

A: Yes. It is unlawful for an Employer or any other person to discharge, threaten to discharge, demote, suspend, reduce other employee benefits, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under the Ordinance.

Employees who believe that they have been subjected to retaliation may either file a

complaint with OLSE or file a lawsuit in court against the employer.

44. Q: May Employees covered by a collective bargaining agreement file a claim with OLSE?

A: Yes. All Employees, including those covered by a collective bargaining agreement, may file a claim with OLSE. Note, however, that Employees would be unable to file a claim with OLSE if the collective bargaining agreement expressly waives the Ordinance. See “Waiver through Collective Bargaining” below.

Waiver through Collective Bargaining

45. Q: Does the Ordinance apply to Employees covered by a collective bargaining agreement?

A: Yes. Generally, the Ordinance applies to persons who perform work in San Francisco, including those employees covered by a bona fide collective bargaining agreement. A bona fide collective bargaining agreement is a written contract concerning wages, hours, and working conditions that is collectively bargained by an employer and a recognized union that represents the employees.

46. Q: May a collective bargaining agreement waive some or all of the provisions of the Ordinance?

A: Yes. The Ordinance permits waiver of some or all of its provisions through a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement (including a side letter agreement to such agreement), must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement may negotiate any language they desire to effectuate a waiver, provided that the language meets the “clear and unambiguous” standard of the Ordinance. OLSE will not interfere with or participate in the negotiation of such language.

Please email further questions to PSL@sfgov.org or call (415) 554-6271