

**SAN JOSE COVID-19 PAID SICK LEAVE ORDINANCE
(URGENCY ORDINANCE NO. 30390)**

April 7, 2020 until 12-31-2020

Covered Employers

This Ordinance applies to Employers that are not required - in whole or in part - to provide paid sick leave benefits under the federal Emergency Paid Sick Leave Act.

The ordinance **applies to essential businesses** and businesses that are still operating remotely but does not apply to businesses that have already closed (Published on *National Law Review, Jackson Lewis 2020*).

If an Employer is not required to provide a portion of the sick leave benefits otherwise required by the federal Emergency Paid Sick Leave Act, the intent of this Ordinance is that it apply to such Employer only to the extent of the benefit not provided under the Act.

Covered Employees

Employees who work at least two hours in San Jose. Employer must provide emergency paid sick leave only to employee who leave their home to perform essential work as defined by the Santa Clara County Public Health Officer's (PHO) shelter-in-place order.

Exemptions: Nothing in this Ordinance is intended to require the provision of sick leave to **Employees who can work from home.**

Who is an Employee?

"Employee" means a person employed by an Employer (as defined below) and who has **worked at least two (2) hours within the geographic boundaries of the City of San Jose** for such Employer, provided as follows:

1. The determination of an employee in the construction industry will be made in accordance with Section 245.5(a)(2) of the California Labor Code, and
2. The determination of employee status will be made in accordance with Section 2750.3 of the California Labor Code.

Employer

"Employer" means a person or entity that is an "employer" as defined in the City's Minimum Wage Ordinance, located in Subsection C of Section 4.100.030 of San Jose Municipal Code.

"Employer" shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee and who is either subject to the Business License Tax [Chapter 4.76](#) of the Municipal Code or **maintains a facility in the City [i.e., San Jose]**.

Essential Work

"Essential Work" means work activities and services - as defined in the order issued by the Santa Clara County Public Health Officer on March 16, 2020 – for which an Employee may leave his/her residence to perform. [Note: On March 31, 2020 the PHO issued an updated, more restrictive order.]

- f. For the purposes of this Order, “Essential Businesses” means:
- i. Healthcare Operations and Essential Infrastructure;
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
 - iii. Food cultivation, including farming, livestock, and fishing;
 - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - v. Newspapers, television, radio, and other media services;
 - vi. Gas stations and auto-supply, auto-repair, and related facilities;
 - vii. Banks and related financial institutions;
 - viii. Hardware stores;
 - ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
 - x. Businesses providing mailing and shipping services, including post office boxes;
 - xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
 - xii. Laundromats, drycleaners, and laundry service providers;
 - xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
 - xiv. Businesses that supply products needed for people to work from home;
 - xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
 - xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;
 - xvii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
 - xviii. Home-based care for seniors, adults, or children;
 - xix. Residential facilities and shelters for seniors, adults, and children;

Sick Leave Hours

- A. A **fulltime** Employee is entitled to **eighty (80) hours of paid sick leave**. These hours are available on the effective date of the sick leave benefit.
- B. A **part-time** Employee is entitled to sick leave hours equal to the number of hours he/she **works on average over a two (2) - week period**. These hours are available on the effective date of the sick leave benefit.

Covered Uses

An Employee can use paid sick leave for any of the following purposes:

1. The Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19,
2. The Employee is advised by a health-care provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a health-care provider,
3. The Employee experiences symptoms of COVID-19 and is seeking medical diagnosis, or
4. The Employee is caring for a minor child because a school or daycare is closed due to COVID-19.

An Employer cannot require an Employee to find a replacement as a condition of using sick leave.

An Employee is not entitled to carryover sick leave between years and is not entitled, under any circumstances, to be paid for unused sick leave. Unused sick leave will not be available after the sunset of this Ordinance and ceases to exist.

Pay Rates and Pay Not to Exceed Depends on Reason for the Leave

Full-Time Employees

Employee	The Employer will pay the Employee for properly used sick leave at the Employee's regular rate of pay up to \$511 a day not to exceed an aggregate of \$5,110 .
To Care for Another Person	The Employer may pay an Employee using sick time to care for another person at two-thirds of the Employee's regular rate of pay up to \$200 a day not to exceed an aggregate of \$2,000 .

Part-time Employees

For a part-time Employee, the Employer will calculate the amount of paid sick leave used based on the average number of hours the Employee worked per day during the six (6) months immediately preceding the effective date of this Ordinance. If an Employee has worked for the Employer less than six (6) months, then the Employer will calculate the amount of sick leave used based on the average hours the Employer expected at time of hire to have the Employee work.

Employee Request for Supplemental Paid Sick Leave

An Employer shall provide supplemental paid sick leave upon the oral or written request of an employee if:

1. The employee takes time off due to COVID-19 infection or because a public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19;
2. The employee takes time off work because the employee is a least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
3. The employee takes time off work because the employee needs 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; or
4. The employee takes time off work because the employee needs to provide care for a family member whose senior care provider or whose school or child care provider caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public official's recommendation. This provision is only applicable to an employee who is unable to secure a reasonable alternative caregiver.

Exemptions

- A. Nothing in this Ordinance is intended to require the provision of sick leave to Employees who can work from home.
- B. This Ordinance does not apply to any Employer that provides its Employees, on the effective date of this Ordinance, with some combination of paid personal leave at least equivalent to the paid sick time required by this Ordinance. An Employer that provides some combination of paid personal leave less than the paid sick time required by this Ordinance is required to comply with this Ordinance to the extent of such deficiency.

March 31, 2020 Santa Clara County Public Health Officer shelter-in-place updated order. It is unclear, which order applies. For example, the ordinance references March 16, 2020 (above) but on March 31, 2020 (see below), the PHO issued an updated, more restrictive order.

- f. For the purposes of this Order, “Essential Businesses” are:
- i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.
 - iii. Food cultivation, including farming, livestock, and fishing;
 - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - v. Construction, but only of the types listed in this subparagraph below:
 1. Projects immediately necessary to the maintenance, operation, or repair of Essential Infrastructure;
 2. Projects associated with Healthcare Operations, including creating or expanding Healthcare Operations, provided that such construction is directly related to the COVID-19 response;
 3. Affordable housing that is or will be income-restricted, including multi-unit or mixed-use developments containing at least 10% income-restricted units;
 4. Public works projects if specifically designated as an Essential Governmental Function by the lead governmental agency;
 5. Shelters and temporary housing, but not including hotels or motels;
 6. Projects immediately necessary to provide critical non-commercial services to individuals experiencing homelessness, elderly persons, persons who are economically disadvantaged, and persons with special needs;
 7. Construction necessary to ensure that existing construction sites that must be shut down under this Order are left in a safe and secure manner, but only to the extent necessary to do so; and
 8. Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed;
 - vi. Newspapers, television, radio, and other media services;
 - vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services (and not, by way of example, car sales or car washes). This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;

ZIP CODES – San Jose, CA		
95002	95119	95133
95101	95120	95134
95103	95121	95135
95106	95122	95136
95108	95123	95138
95109	95124	95139
95110	95125	95140
95111	95126	
95112	95127	
95113	95128	
95115	95129	
95116	95130	
95117	95131	
95118	95132	