

SAN JOSE (CITY)
REVISED COVID-19 PAID SICK LEAVE ORDINANCE

Original: April 7, 2020 until 12-31-2020

Retroactive Extension and Revisions: January 1, 2021 to June 30, 2021

Covered Employers

As of 1/1/2021 this ordinance applies only to employers that meet *both* the following requirements:

- The employer is subject to the Business License Tax required by Chapter 4.76 of the Municipal code, or maintains a facility within the boundaries of the City.
- The employer is lawfully allowed to conduct business activities under the County of Santa Clara, state, or federal health orders.

Covered Employees

The ordinance requires employers to provide the required paid sick leave benefit only to those employees meeting *both* of the following requirements:

- The employee has worked for the employer for at least two (2) hours within the geographic boundaries of the City of San Jose.
- The employee leaves their own residence to perform work for the employer and is unable to telecommute.

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 – as of 1/1/2021 applies to all employers

“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].**

Uses for COVID-19 Paid Sick Leave

Employee is **unable to work** due to a need for leave because of any of the following reasons:

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,
4. The Employee is caring for an individual who is either: (1) subject to a federal, state, or local quarantine or isolation order related to COVID-19, or (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The Employee is caring for a son or daughter of such Employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.

No Payout of Unused Emergency Paid Sick Leave

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

Nothing in this ordinance shall be construed to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, or other separation from employment for paid sick time under this Ordinance that has not been used by such employee.

COVID-19 Paid Sick Leave Hours*

*No additional hours or benefits are provided with the extension of the Ordinance through June 30, 2021. Benefit period is from April 2, 2020 to June 30, 2021.

- 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.
- C. **Part-Time Employee Where Schedule Varies** - Use whichever of the following applies:
 1. The number of hours equal to the average number of hours that the Employee was scheduled per day over the six (6) month period ending on the date on which the Employee takes the paid sick time, including hours for which the Employee took leave of any type; or
 2. If the Employee has not worked for a six (6) month period, the reasonable expectation of the Employee at the time of hiring of the average number of hours per day that the Employee would normally be scheduled to work.

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.

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.

Prohibitions

- A. An employer is prohibited from discharging, disciplining, or in any other manner discriminating against any employee who takes leave in accordance with this ordinance.
- B. An Employer cannot require an Employee to find a replacement as a condition of using COVID-19 paid sick time.

Employer’s Termination of Paid Sick Time

COVID-19 paid sick time shall cease beginning with the employee’s next scheduled work shift immediately following the termination of the need for paid sick time under this ordinance.

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	



CITY OF SAN JOSE

COVID-19 PAID SICK LEAVE ORDINANCE

The City of San José COVID-19 Paid Sick Leave Ordinance expands the Families First Coronavirus Response Act (FFCRA), enacted by the federal government on April 1, 2020. FFCRA entitles certain employers to provide eligible employees with paid sick leave for specified reason related to COVID-19. These Ordinance provisions will apply from April 7, 2020 through December 31, 2020.

PAID SICK LEAVE ENTITLEMENTS

Generally, employers covered under the Ordinance must provide eligible employees up to two weeks of paid sick leave based on the higher of their regular rate of pay, or the applicable state or local minimum wage, paid at:

- 100% of pay rate for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- 66% of pay rate for qualifying reasons #4 and #6 below, up to \$200 daily and \$2,000 total;

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees not covered under the FFCRA, which include but are not limited to private sector employers with more than 500 employees and employers of 50 or fewer who qualify under the “small business” exemption under the FFCRA.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

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| (1) Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | (4) Is caring for an individual subject to an order described in (1) or self-quarantine and described in (2); |
| (2) Has been advised by a health care provider to self-quarantine related to COVID-19; | (5) Is caring for his or her child whose school or place of care is closes (or the childcare provider is unavailable) due to COVID-19 related reason; or |
| (3) Is experiencing COVID-19 symptoms and is seeking medical diagnosis; | (6) Is experiencing any other substantially similar condition specified by the U.S Department of Health and Human Services |

QUESTIONS?

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