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September 30, 2022

San Francisco's New Public Health Emergency Law Creates Mandatory Paid Leave

Beginning October 1, 2022, when a public health emergency is in place, businesses with 100 or more employees worldwide must provide up to 80 hours of paid Public Health Emergency Leave (PHEL) each calendar year to each employee who performs work in the city of San Francisco. This paid leave is in addition to any paid time off, including paid sick leave under the San Francisco Paid Sick Leave Ordinance (PSLO). For purposes of the PHEL, a "Public Health Emergency" is defined as a local or statewide health emergency related to any contagious, infectious, or communicable disease, as declared by the city's local health officer or the state health officer pursuant to the California Health and Safety Code, or an air quality emergency.

Covered Employers

For the purposes of PHEL, an "employer" means any entity who employs or exercises control over the wages, hours, or working conditions of 100 or more employees worldwide. PHEL will not apply to employers who have a unionized workforce that expressly waives PHEL in a bona fide collective bargaining agreement in clear and unambiguous terms.

Covered Employees

Under PHEL, an "employee" is any person, including part-time or temporary employees, who performs work as an employee within the geographic boundaries of the city and county of San Francisco.

Acceptable Reasons for Using PHEL

As with the temporary COVID-19-related paid sick leave provisions, an employee may use PHEL if they are unable to work (or telework) for any of the following reasons:

- 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 resides) related to the public health emergency.
- The employee has been advised by a healthcare provider to isolate or quarantine, or the employee is caring for a family member who has been so advised. Note that to qualify as a healthcare provider under the PHEL, you do not have to be a licensed physician. Anyone authorized to practice medicine in the state or any other person determined by the U.S. Department of Labor (DOL) to be capable of providing healthcare services would qualify.
- The employee 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, or the employee is caring for a family member who is experiencing symptoms.
- The employee is caring for a family member whose 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.
- An air quality emergency (defined for these purposes as any time the Bay Area Air Quality Management District (BAAQMD) issues a Spare the Air Alert) if the employee is a member of a "vulnerable population" and primarily works outdoors. A member of a vulnerable population is defined as any individual who has been diagnosed with heart or lung disease; has respiratory problems including, but not

limited to, asthma, emphysema, and chronic obstructive pulmonary disease; is pregnant; or is age 60 or older.

Amount of PHEL To Be Allocated

Full-time, regular, or fixed schedule employees. From October 1, 2022, to the end of the calendar year, the allocation shall be equal to the number of hours an employee regularly works (or took paid leave) over a one-week period, not to exceed 40 hours. Beginning January 1, 2023, and all subsequent years, an employee shall be allocated the number of hours an employee regularly works or takes paid leave over a two-week period, not to exceed 80 hours.

Employees whose weekly hours vary. From October 1, 2022, to the end of the calendar year, an employee shall be allocated the average number of hours worked or took paid leave over a one-week period during the previous calendar year. If the employee started after the beginning of the calendar year, an employee shall be allocated the average number of weekly hours since the employee's start date, not to exceed 40 hours.

Beginning January 1, 2023, and for all subsequent years, an employee is entitled to allocated leave in the average amount of hours the employee worked or took paid leave over a two-week period during the previous calendar year, not to exceed 80 hours.

If an employee whose number of weekly work hours varies was not employed on October 1, 2022, the employee shall be allocated the average number of hours over a one-week period that the employee worked or took paid leave since their start date, not to exceed 40 hours.

After January 1, 2023, if an employee whose number of weekly work hours varies was not employed by the beginning of the calendar year, the employee shall be allocated the average number of hours over a two-week period during the previous six months. When an employee has yet to be employed for six months, the employer shall allocate the average number of hours worked over a two-week period since the employee's start date.

Offsetting PHEL

After October 1, 2022, an employer may reduce the allocation of PHEL for every hour an employee takes paid leave pursuant to an employer-established paid leave policy that can be used for the same reasons of PHEL. An employer may also reduce the allocation of PHEL for every hour an employee takes paid leave or paid time off pursuant to the state's COVID-19 paid sick leave requirements, if they are extended. On September 29, 2022, California Governor Gavin Newsom signed AB 152 to extend California's COVID-19 Supplemental Paid Sick Leave law until December 31, 2022.

After January 1, 2023, and in subsequent years, if an employer is required by federal, state, or city law to provide paid leave or paid time off to address a public health threat, an employer may reduce the allocation of PHEL for every hour of such paid leave or paid time off the employer is required to provide.

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