



ERIC GARCETTI
MAYOR

Public Order Under City of Los Angeles Emergency Authority

Issue Date: June 24, 2021

Subject: Vaccine Paid Sick Leave Due to COVID-19

The City of Los Angeles has an interest in ensuring all of its residents receive the COVID-19 vaccine as quickly as possible to prevent transmission and to facilitate a smooth re-opening of the City's economy. In order to further these interests, workers should not be forced to decide between a paycheck and securing a vaccine to safeguard their own wellbeing and promote public health. All workers should have access to paid leave for the time it takes to obtain the COVID-19 vaccine and to recover from any side effects related to the vaccination.

In March of 2021, Governor Newsom signed SB 95, which added Section 248.2 to the Labor Code and requires employers with more than 25 employees to provide 80 hours of COVID-19 related sick leave for full-time employees, and comparable time off for part-time employees. Among other qualifying reasons, covered employees may take that leave to get the COVID-19 vaccine and to recover from vaccine-related side effects. However, employees who work for businesses employing 25 or fewer workers are not entitled to the benefits set forth in Labor Code Section 248.2. Additionally, many vulnerable residents, especially essential workers, may have already exhausted the existing 80-hour benefit due to prior infection or exposure to COVID-19, and thus lack the necessary hours to take time off work to get vaccinated, or may have been forced to take unpaid time off to receive the vaccination previously. Therefore, the City must take action to further support individuals taking steps to complete the vaccination process and ensure that all workers have access to additional paid leave benefits to obtain the COVID-19 vaccine.

While the City has made important strides in getting individuals vaccinated, it is clear that more should be done. Vulnerable communities, including essential workers, still face barriers to vaccine access, including, for example, lack of transportation options and work obligations. This Order aims to reduce the barriers workers face when seeking the COVID-19 vaccine. Additionally, the requirement to provide paid leave under this Order applies retroactively to January 1, 2021, in order to protect the

economic well-being of, and to not indirectly penalize, employees who took leave to receive a COVID-19 vaccine beginning on or after January 1, 2021, and before the effective date of this Order.

Federal law, including the American Rescue Plan Act of 2021 (ARP), allows certain employers to claim refundable tax credits that reimburse them for the cost of providing paid sick leave to their employees due to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations. Please visit [irs.gov](https://www.irs.gov) for more information.

This Emergency Order will promote public health, protect jobs and preserve economic stability. Therefore, by virtue of the authority vested in me as Mayor of the City of Los Angeles under the provisions of the Los Angeles Administrative Code, Chapter 3, Section 8.29 to promulgate, issue, and enforce emergency rules, regulations, orders, and directives, I hereby declare the following to be necessary for the protection of life and property and I hereby order, effective immediately, during the emergency period, that the following provisions are in effect.

I. COVID-19 VACCINE LEAVE.

A. The following definitions apply for purposes of this Order:

1. An Employee is an individual who performs any work within the geographic boundaries of the City of Los Angeles for an Employer and who has been employed with the same Employer for 60 days.
 - a. A Full-Time Employee is an Employee who the Employer considers to work full time; or an Employee who worked or was scheduled to work, on average, at least 40 hours per week for the Employer in the two weeks preceding the date the Employee took COVID-19 Vaccine Leave.
 - b. A Part-Time Employee is an Employee who is not a Full-Time Employee.
2. An Employer is a person, as defined in Section 18 of the California Labor Code, including a corporate officer or executive, who directly or through an agent or any other person, including through the services of a temporary service or staffing agency, employs or exercises control over the wages, hours or working conditions of any Employee. An Employer does not include federal, state, or local government agencies.
3. COVID-19 Vaccine Leave is time an Employee takes off work related to receiving a COVID-19 vaccine injection that must be compensated by an Employer. COVID-19 Vaccine Leave includes the time an Employee spent traveling to and from an appointment, receiving the injection, and recovering from vaccination related side effects, which prevent the Employee from being able to work or telework.

Each hour of COVID-19 Vaccine Leave shall be calculated as follows:

a. Non-exempt Employees shall be compensated at the highest of the following rates:

1. The normal rate of pay for the workweek in which leave is taken;
2. The City's \$15 per hour minimum wage; or
3. The average hourly pay for the preceding 60 days (not including overtime).

b. Exempt Employees shall be compensated in the same manner as the Employer calculates wages for other forms of paid leave time.

Notwithstanding the foregoing, the COVID-19 Vaccine Leave required by this Order shall not exceed \$511 per day (or \$255.50 per each 4 hours), or \$1,022 in the aggregate, unless federal legislation is enacted that increases these amounts beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new federal dollar amounts shall apply to this Order as of the date the new amounts are applicable under the federal law.

COVID-19 Vaccine Leave required by this Order is in addition to other paid leave available to an Employee, including under Labor Code Section 245 et seq. (which encompasses Section 248.2). An Employer may not require an Employee to use other paid or unpaid leave prior to using the COVID-19 Vaccine Leave required by this Order.

B. An Employer shall provide COVID-19 Vaccine Leave, upon the oral or written request of an Employee, as follows.

1. An Employer that employs 25 or fewer employees shall:

a. Provide a Full-Time Employee up to 4 hours of COVID-19 Vaccine Leave to obtain each COVID-19 vaccine injection, and up to 8 hours of COVID-19 Vaccine Leave to recover from any vaccination related side effects.

b. Provide a Part-Time Employee up to the prorated amount of 4 hours of COVID-19 Vaccine Leave per injection based on the average number of hours worked in the 60 days preceding the injection, and up to the prorated amount of 8 hours of COVID-19 Vaccine Leave to recover from any vaccination related side effects. (Example: An Employee worked 240 hours in the last 60 days (including non-working days) --> 240 hours divided by 60 days = average of 4 hours per day --> average of 4 hours per day x 7 days = average of 28 hours per week. At a prorated rate, the Employee is eligible for 2.8 hours (2 hours 48 minutes) per vaccine injection and 5.6 hours (5 hours 36 minutes) for vaccine recovery.)

2. An Employer that employs more than 25 employees shall:
 - a. Provide a Full-Time Employee who has exhausted all available leave under Labor Code Section 248.2 or the Mayor's Public Order re: Supplemental Paid Sick Leave Due to COVID-19, due to prior COVID-19 related impacts, COVID-19 Vaccine Leave as follows: up to 4 hours of additional paid leave per injection and up to 8 hours of additional paid leave for recovery from vaccination related side effects.
 - b. Provide a Part-Time Employee who has exhausted all available leave under Labor Code Section 248.2 or the Mayor's Public Order re: Supplemental Paid Sick Leave due to COVID-19, due to prior COVID-19 related impacts, COVID-19 Vaccine Leave as follows: up to the prorated amount of 4 hours per injection based on the average number of hours worked in the 60 days preceding the injection, and up to the prorated amount of 8 hours for recovery from vaccination related side effects. (Example: An Employee worked 240 hours in the last 60 days (including non-working days) --> 240 hours divided by 60 days = average of 4 hours per day --> average of 4 hours per day x 7 days = average of 28 hours per week. At a prorated rate, the Employee is eligible for 2.8 hours (2 hours 48 minutes) per vaccine injection and 5.6 hours (5 hours 36 minutes) for vaccine recovery.)
3. An Employer may ask an Employee to provide written verification of receipt of a COVID-19 vaccine in order to receive payment for COVID-19 Vaccine Leave.

VI. OFFSET.

If an Employer provides an Employee another supplemental benefit that is in addition to any other accrued leave to which an Employee is entitled, including but not limited to leave an Employee is entitled to under Labor Code Section 245 et seq. (which encompasses Section 248.2), for leave taken on or after January 1, 2021, that is payable for the reasons outlined in this Order for COVID-19 Vaccine Leave, and that compensates an Employee in an amount equal to or greater than the amount required by this Order, then the Employer may count the hours of the other supplemental benefit toward the total number of hours required by this Order.

III. RETALIATORY ACTION PROHIBITED.

No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this Order, for requesting to use or actually using COVID-19 Vaccine Leave under this Order, for participating in proceedings related to this Order, for seeking to enforce his or her rights under this Order by any lawful means, or for otherwise asserting rights under this Order.

IV. ENFORCEMENT.

A. An Employee claiming a violation of this Order may bring an action in Superior Court of the State of California against an Employer and may be awarded:

1. Reinstatement to the position the Employee was discharged in violation of this Order.
2. Back pay and COVID-19 Vaccine Leave unlawfully withheld, calculated in a manner consistent with the requirements of this Order.
3. Other legal or equitable relief the court may deem appropriate.

B. If an Employee is the prevailing party in any legal action taken pursuant to this Order, the court may award reasonable attorneys' fees and costs to the Employee.

C. In no event shall any criminal penalties attach for violation of this Order.

V. NO WAIVER OF RIGHTS.

Any waiver by an Employee of any or all of the provisions of this Order shall be deemed contrary to public policy and shall be void and unenforceable.

VI. COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.

The provisions of this Order are in addition to or independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee.

VII. CONFLICTS.

Nothing in this Order shall be interpreted or applied to create any power or duty in conflict with any federal or state law.

VIII. SEVERABILITY.

If any subsection, sentence, clause, or phrase of this Order is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The Mayor hereby declares that he would have adopted this Order and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Order would be subsequently declared invalid or unconstitutional.

IX. OPERATIVE PERIOD.

This Order shall be in effect until September 30, 2021, except that an Employee taking COVID-19 Vaccine Leave at the time of the expiration of this Order shall be permitted to take the full amount of COVID-19 Vaccine Leave to which the Employee would be entitled under this Order. The provisions of this Order are made retroactive to January 1, 2021, as described in Section X.

X. RETROACTIVE PROVISIONS AND PAYMENT.

The requirement to provide COVID-19 Vaccine Leave under this Order applies retroactively to January 1, 2021, in order to protect the economic well-being of Employees and to avoid indirectly penalizing those Employees who took leave for the reasons listed in Section I, subsection A 3, after January 1, 2021, but before the effective date of this Order. For any such leave taken, the following provisions apply.

A. If the Employee took time off work to receive a COVID-19 vaccine or to recover from a COVID-19 vaccination on or after January 1, 2021, and if the Employer did not compensate the Employee in an amount equal to or greater than what is required by this Order, then upon the oral or written request of an Employee, the Employer shall provide the Employee with a retroactive payment that provides for such compensation. Any retroactive payment required shall be paid on or before the payday for the next full pay period after the oral or written request of the Employee.

B. If the Employer required the Employee to use leave other than paid leave provided under Labor Code Section 248.2 or the Mayor's Public Order re: Supplemental Paid Sick Leave Due to COVID-19, such as vacation, paid or unpaid time off, or other sick leave benefits, then upon the oral or written request of an Employee, the Employer shall reclassify the paid leave taken as COVID-19 Vaccine Leave, and restore the leave taken by the Employee under the different category of leave. Any reclassification, restoration, or adjustment of other leave previously taken, as well as the remaining hours of COVID-19 Vaccine Leave, shall be reflected on the Employee's wage statement on or before the payday for the next full pay period after the oral or written request of the Employee.

Nothing herein shall require an Employer to act upon a request made by an Employee prior to the effective date of this Order.

The requirements of this Section do not apply to any leave previously provided to an Employee for which the Employer is entitled to offset, as described in Section II of this Order.

XI. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

A collective bargaining agreement in place on the effective date of this Order may supersede the provisions of this Order if it contains COVID-19 vaccine leave provisions. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this Order may only be expressly waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a collective bargaining agreement is in place on the effective date of this Order but the agreement does not address COVID-19 vaccine leave provisions, the Employer must comply with this Order unless and until the agreement is amended to expressly waive in clear and unambiguous terms set forth in the agreement.



Eric Garcetti, MAYOR

Dated: June 24, 2021 at Los Angeles, California

Time: 12:30 p.m.

Filed with the City Clerk

Date: _____

Time: _____

By: _____