

City of San José COVID-19 Paid Sick Leave Ordinance

Frequently Asked Questions

The City of San José Office of Equality Assurance is providing the following information as a public service. This information and related materials are provided to give the public access to information on the San José Paid Sick Leave Ordinance. While we attempt to keep the information timely and accurate, there may be a delay between official publications of the materials and modification of these pages. Therefore, we do not guarantee that the information provided is the most up to date.

For more information on the Families First Coronavirus Response Act, including changes to the Family and Medical Leave Act and Emergency Paid Sick Leave Act, please visit the [Department of Labor’s Wage and Hour Division website](#).

Q: What is the San José Paid Sick Leave Ordinance?

A: City Council passed the [San José Paid Sick Leave Ordinance](#) on April 7, 2020, in response the COVID-19 health crisis. The Ordinance requires certain employers to provide select employees with paid sick leave to be used for specified COVID-19 related reasons.

Q: What are the effective dates of the San José Paid Sick Leave Ordinance?

A: Employers subject to the Ordinance must provide the required paid sick leave benefits starting April 8, 2020 through December 31, 2020.

Q: Does the San José Paid Sick Leave Ordinance apply to all employers in San José?

A: No. The Ordinance applies only to employers that meet *both* of the following requirements.

Requirement #1	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.
Requirement #2	The employer is not required to provide paid sick leave benefits under the federal Emergency Paid Sick Leave Act . For example, the federal Emergency Paid Sick Leave Act does not apply to employers with over five hundred (500) employees, so the City’s Ordinance applies to those employers.

Q: Does the City’s Ordinance apply to an employer that must provide some - but not all - of the sick leave benefits provided for in the federal Emergency Paid Sick Leave Act?

A: Yes, assuming the employer meets the first requirement -- either being subject to the Business License Tax required by Chapter 4.76 of the San José Municipal Code or maintaining a facility within City boundaries.

The City’s Ordinance applies to an employer that is not required to provide a *portion* of the sick leave benefits in the federal Emergency Paid Sick Leave Act. However, the Ordinance applies only to the extent of the benefit not provided under the Act. For example, if the Act does not require the employer to provide paid sick leave to care for a minor child, the City’s Ordinance would require the employer to provide that paid sick leave benefit.

Q: If the Ordinance applies to an employer, does the employer have to provide all its employees with the required paid sick leave benefit?

A: No. The Ordinance requires employers to provide the required paid sick leave benefit only to those employees meeting both of the following requirements.

Requirement #1	The employee has worked for the employer for at least two (2) hours within the geographic boundaries of the City of San José.
Requirement #2	The employee leaves their own residence to perform “essential work” for the employer. “Essential work” means work that employees are lawfully allowed to leave their residences to perform under the “shelter in place” order of the Health Officer of the County of Santa Clara, dated March 16, 2020, as amended on March 31, 2020.

Q: How will the City determine if someone is an employee or an independent contractor?

A: The City will determine employee status in accordance with [Section 2750.3 of the California Labor Code](#). 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](#).

Q: How many hours of paid sick leave are eligible fulltime employees entitled to?

A: A fulltime employee is entitled to eighty (80) hours of paid sick leave.

Q: How many hours of paid sick leave are eligible part-time employees entitled to?

A. A part-time employee is entitled to paid sick leave equivalent to the average number of hours worked over a two-week period. The weekly average is calculated by using the hours the employee worked per week between October 8, 2019 and April 7, 2020. A total of 26 weeks.

Here's an example of how the average weekly hours can be calculated:

Employee worked a total of 496 hours between 10/8/19 and 4/7/20.

496 hours ÷ 26 weeks = 19.1 hours average per week

The employee is eligible for two weeks of the average hours per week, which is 38.20 hours.

If an eligible employee has worked for less than 6 months, then the average hours the employer expected at the time of hire will be used.

Q: When can an employee start using the paid sick leave?

A: The employer must make the paid sick leave to which an employee is entitled under the Ordinance available immediately on the Ordinance's effective date of April 7, 2020.

Q: Are there any limitations on the use of paid sick leave under the Ordinance?

A: Yes. An employee can only use the paid sick leave provided under the Ordinance for at least one of the reasons set forth below:

- Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
- Employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

An employee can take paid sick leave for one or more of the above qualifying reasons until the employee either (1) uses the full amount of paid sick leave or (2) no longer has a qualifying reason for taking paid sick leave.

Q: What rate of pay applies when an employee uses Paid Sick Leave?

A: Like the federal Emergency Sick Leave Act, the rate of pay is based on the qualifying reason for usage of paid sick leave. If an employee uses paid sick leave for themselves, they must be paid at least their regular rate of pay up to \$511.00 per day, not to exceed an of \$5,110.00 for two weeks.

If an employee uses paid sick leave to care for another person, they must be paid at least two-thirds (2/3) of their regular pay up to \$200.00 per day, not to exceed an \$2,000.00 for two weeks.

Q: Is the San José Paid Sick Leave the same for adult and minor employees?

A: Yes. Paid Sick Leave is the same for adult and minor employees.

Q: Does the San José Paid Sick Leave cover employees who are not San José residents?

A: Yes, so long as the employee meets all the other requirements of the Ordinance.

Q: Can an employer require an employee to find a replacement as a condition of taking paid sick leave?

A: No. An employer cannot require an employee to find a replacement as a condition of using sick leave.

Q: Can employees "carryover" Paid Sick Leave hours provided in San José's Paid Sick Leave Ordinance?

A: No. Employees are not entitled to carryover sick leave between years and are not entitled to be paid for unused sick leave. Unused sick leave will not be available after the sunset of this Ordinance.

Q: What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

A: The City is following [Fair Labor Standards Act](#) record keeping requirements. Compliance with the City's COVID-19 Paid Sick Leave Ordinance requires businesses to maintain and provided the following documentation:

- The name of your employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that he or she is unable to work because of the reason.

Q: Where can I find more information about the San José Paid Sick Leave Ordinance?

A: Information regarding the San José Paid Sick Leave Ordinance is posted at www.sanjoseca.gov/minimumwage. You can also call the San José Office of Equality Assurance (OEA) at 408-535-8430 or e-mail at MyWage@sanjoseca.gov.

Q: Does the San José COVID-19 Paid Sick Leave Ordinance protect undocumented employees?

A: Yes, provided the employee meets all the other requirements of the Ordinance. The City's Office of Equality Assurance will process and investigate a claim without regard to an employee's immigration status. Employees filing a claim with the City's Office of Equality Assurance will not be questioned about their immigration status.

Q: May employers use other paid time off (i.e. Paid Time Off, Vacation, Sick) as a credit toward its obligations to pay the San José Paid Sick Leave?

A: Yes. The 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.

Q: What can an employee do if the employee's employer does not provide the benefits required by the San José Paid Sick Leave?

A: The employee can file a wage claim with the Office of Equality Assurance. The employee must file a claim either by e-mail or by phone.

Phone: 1 (408) 535-430

E-mail: MyWage@sanJoseca.gov

Q: What if an employer retaliates against an employee because the employee questioned the employer about not providing required paid sick leave benefits?

A: Under the San José Paid Sick Ordinance, it is unlawful for an employer to retaliate against employees who assert their right. If an employee believes they have been subjected to retaliation, the employee may file a claim with the Office of Equality Assurance.