

 e-Alert

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San Francisco Approves New Public Health Emergency Leave

Background

Voters in San Francisco passed [Proposition G](#), a new [Public Health Emergency Leave Ordinance](#) (PHEL), which will go into effect on October 1, 2022. The *permanent* ordinance will require employers to provide public health emergency leave during a public health emergency.

Summary

Businesses with 100 or more workers worldwide are required to offer each employee who works in San Francisco up to 80 hours of paid public health emergency leave starting on October 1, 2022. The ordinance will not apply to certain non-profits and workers covered under a collective bargaining agreement that expressly waives the ordinance's requirements.

A Public Health Emergency is defined as a local or statewide health emergency related to any contagious, infectious, or communicable disease declared by San Francisco or California health officials or an air quality emergency when the Bay Area Air Quality Management District issues a Spare the Air alert.

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Amount of Leave

Beginning October 1, 2022, and on January 1st of each following year, employers must frontload PHEL in the following manner, with the amount not to exceed 80 hours:

- **Full Time, Regular, or Fixed Schedule Employees:** An amount equal to the number of hours an employee regularly works or takes paid leave in a two-week period
- **Variable Hour Employees:** (a) An amount equal to the average hours the employee worked or took paid leave over a two-week period during the previous calendar year (or during the previous six months if not employed on October 1 or January 1), or (b) since the employee's start date if after the beginning of the previous calendar year or if employed for fewer than six months if not employed on October 1 or January 1

Employers are not required to carry over unused PHEL from year to year.

For October 1 through December 31, 2022, employers are to calculate the entitlement using a one-week period. The PHEL allocation may not exceed 40 hours.

Offset Provisions: In 2022 employers may reduce the PHEL entitlement if, after October 1, 2022, employees use the following types of paid time off:

- Paid leave employees may use for covered reasons under the ordinance that employers voluntarily provide; or
- California COVID-19 supplemental paid sick leave (SPSL) if the state extends the requirements beyond September 30, 2022

Covered Uses

Employees may use PHEL when they are unable to work (or telework) due to the following reasons:

- Recommendation or requirement of an individual or federal, state, or local health order (which includes an order issued by the local jurisdiction where the Employee or Family Member of the Employee resides) related to the Public Health Emergency
- The employee or family member of the employee is caring for, has been advised to isolate or quarantine by a healthcare provider
- The employee or family member the employee is caring for is experiencing symptoms and seeking a medical diagnosis or has received a positive diagnosis for a possible infectious, contagious, or communicable disease associated with the Public Health Emergency

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- The employee is caring for a family member if the school or place of care of the family member has been closed, or the care provider of the family member is unavailable due to the Public Health Emergency
- The employee is a member of a vulnerable population and primarily works outdoors during an Air Quality Emergency

Employers of specific healthcare providers or emergency responders may choose to limit their employees' PHEL leave in accordance with the ordinance.

Under the ordinance, the term "family member" has the same meaning as San Francisco's Paid Sick Leave Ordinance and includes child, grandchild, grandparent, parent, sibling, spouse, or domestic partner, or a designated person if the employee does not have a spouse or domestic partner.

Using Leave

Once granted, PHEL is available for immediate use, regardless of the date of hire. Employers may not require employees to use PHEL in increments greater than one hour, and they may not require employees to use other forms of accrued paid leave before PHEL, although an employee may voluntarily choose to do so. In addition, employers cannot require employees to find coverage for their missed hours.

If the need is foreseeable, employers can enforce reasonable notice procedures and request documentation to confirm an employee's status as a member of a vulnerable population, however, further guidance is pending on the documentation standard.

Lastly, employers cannot require employees to disclose health information in order to use PHEL.

Rate of Pay

PHEL must be paid using the same calculation as San Francisco's Paid Sick Leave Ordinance. For exempt (salary) employees, PHEL will be paid in the same manner as other forms of paid leave. For non-exempt (hourly) employees, employers may pay PHEL using either the regular rate for the workweek in which the employee uses PHEL **or** by dividing total wages (excluding overtime) by total hours in the full pay period within 90 days of employment before PHEL use. Under both options, the PHEL rate cannot be less than the San Francisco minimum wage, and PHEL must be paid in the next regular payroll following the use of PHEL.

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Prohibitions, Penalties, and Enforcement

It is unlawful for employers to require health information to use PHEL. Employers may not interfere with, restrain, or deny the rights of employees under the ordinance. Retaliation towards an employee exercising their rights is prohibited, and violations may be reported to the San Francisco Office of Labor Standards Enforcement (SF OLSE).

If PHEL was unlawfully withheld, employees may be awarded the dollar amount of the leave multiplied by three, or \$500, whichever is greater. The OLSE may also assess penalties for notice, retaliation, and other violations which will increase by 50% for subsequent violations within three years.

Notice & Recordkeeping

Employers must post the [notice](#) in all languages provided by the city in a conspicuous location and provide the notice electronically (email/text/intranet) when feasible.

If employers must provide similar notice under California's paid sick leave law, the Healthy Workplaces, Healthy Families Act of 2014, they must display the amount of PHEL available on paystubs. If employers provide unlimited paid leave or paid time off, they can indicate "unlimited."

Employers must retain records and documentation of hours worked and PHEL taken for four years. If the employer does not retain adequate and accurate records, there is a presumption of violation.

Employer Next Steps

- Continue to Monitor [SF OFSE](#) for additional information and guidance
- Employers must review existing policies and/or create a new policy if applicable
- Employers must post and distribute new PHEL [poster](#)
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policy please [email us](#)

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