



San Francisco Grocery, Drug, And Restaurant Employees – And On-Demand Delivery Contractors – Receive New COVID-19 Protections

Insights

4.23.20

The San Francisco Board of Supervisors just passed the Grocery Store, Drug Store, Restaurant, and On-Demand Delivery Services Employee Protections ordinance, requiring San Francisco employers to provide additional health and scheduling protections to employees during the COVID-19 public health emergency. This Ordinance will go into effect once signed by Mayor Breed. What do employers need to know about these new obligations?

Who Is Considered An Employer?

The Ordinance covers:

- Establishments primarily engaged in the retail sale of food (grocery stores, supermarkets, convenience stores, restaurants, cafes, etc.);
- Establishments primarily engaged in the retail sales of medication, pharmaceutical, or medical supplies (drug stores, pharmacies, etc.); and
- On-Demand Delivery Services, defined as online or mobile applications that offer delivery from no fewer than 20 restaurants, grocery stores, drug stores, or other Essential Businesses (Postmates, Uber Eats, Grub Hub, Doordash and the like).

Who Is Considered An Employee?

Any person who in a particular week performs at least two hours of work in the City and County of San Francisco. Also, On-Demand Delivery Services drivers and shoppers are considered “employees,” regardless of how they are classified. What this means is that independent contractors of On-Demand Delivery Services are covered under this ordinance.

What Are An Employer’s Responsibilities?

Covered Employers have five main requirements under the Ordinance, with the most significant affecting On-Demand Delivery Services:

1. Provide employees with hand sanitizer, soap and water, or effective disinfectant in the workplace. On-Demand Delivery Services Employers must provide, or reimburse, employees for the reasonable cost of purchasing necessary hand sanitizer, disinfecting cleaning supplies, or any *necessary* personal protective equipment (PPE), such as gloves and masks.

2. Provide a Social Distancing Protocol to each employee who works at a facility and post the Social Distancing Protocol in each facility. On-Demand Delivery Services Employers must provide the Social Distancing Protocol in a manner calculated to reach employees, whether by electronic communication or posting conspicuously on Employers' internal platforms.
3. Offer employees who make deliveries the option of a "no-contact" delivery method where feasible with detailed guidance on how to safely make both in-person and no-contact deliveries.
4. Continue to regularly disinfect high-touch surfaces. On-Demand Delivery Services Employers must require delivery drivers to regularly disinfect high-touch surfaces in their vehicles and compensate them for the time spent doing so.
5. When reasonably feasible, approve an employee's request to cancel scheduled work for any reason for which the employee may otherwise use leave under San Francisco's Paid Sick Leave Ordinance and allow eligible employees to use available accrued paid sick leave, FFCRA Emergency Paid Sick Leave, San Francisco's Public Health Emergency Leave, or reschedule the work.

What Are The Consequences Of Violating This Ordinance?

An Employer may not retaliate against an employee for requesting the protections contained in this Ordinance. Doing so will potentially result in legal awards to the Employee including:

- Reinstatement,
- Backpay, and
- Other legal and/or equitable relief.

When Does This Ordinance End?

The Ordinance will be lifted on the 61st day following enactment, or when the Public Health Emergency is lifted, whichever occurs first. The Ordinance can also be extended if reenacted. The City of Los Angeles also passed similar legislation impacting Grocery, Drug, and Food Retail Businesses.

Conclusion

Fisher & Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our San Francisco office, or any member of our COVID-19 Taskforce. You can also review our nationwide Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center For Employers, maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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