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CITY ATTORNEY

REPORT NO. R 20 - 0091
MAR 25 2020

REPORT RE:

**DRAFT ORDINANCE ADDING ARTICLE 5-72HH TO CHAPTER XX OF
THE LOS ANGELES MUNICIPAL CODE TO PROVIDE SUPPLEMENTAL
SICK LEAVE TO WORKERS AFFECTED BY COVID-19**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 20-0147-S39

Honorable Members:

On Tuesday March 17, 2020, the City Council adopted 48 motions related to COVID19 pandemic. Motion 72HH seeks to implement a supplemental sick leave policy to provide employees in the City of Los Angeles with two weeks paid leave during the COVID-19 public health crisis.

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance adds Article 5-72HH to Chapter XX of the Los Angeles Municipal Code to provide supplemental sick leave to workers affected by COVID-19.

The Federal Department of Labor recently enacted Families First Coronavirus Response Act to address supplemental sick leave in response to the COVID-19 pandemic. (HR 6201.) These new COVID-19 sick leave laws supplement the current Fair Labor Standards Act (FLSA) by requiring certain employers to pay 80 hours of sick leave.

The FLSA does not expressly prohibit state legislation in the area of wages and working conditions. "To the contrary, it (FLSA) specifically contemplates state regulation" of labor conditions. *Doctors Hospital, Inc. v. Silva Recio*, 558 F.2d 619 (1st Cir. 1977). 29 U.S.C. § 218(a). Nor does the federal statute implicitly prohibit state regulation by occupying the whole field and leaving no room for supplementary state provisions. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Courts have upheld state wage-related laws "with a social redeeming value and purpose" as authorized under the traditional "police power" belonging to states. *Keystone Collection Service Inc. v. Recio*, 389 F. Supp. 164 (D.Puerto Rico 1975).

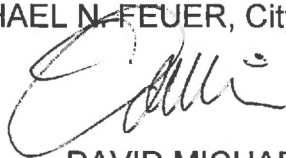
Similarly, California Labor Code Section 1205(b) permits municipal legislation in the exercise of local police powers as long as the local legislation is more stringent than state law. In 2016, the City of Los Angeles enacted the Minimum Wage Ordinance (MWO). The MWO includes provisions for minimum wage and paid sick leave that are more stringent than the state provisions. The enclosed draft ordinance is an extension of the City's police power to enact more stringent wage standards, specifically, the ordinance imposes a requirement that employers provide an amount equivalent to two weeks' pay for workers in the City relating to the COVID-19 pandemic.

If you have any questions regarding this matter, please contact Deputy City Attorney Dania Minassian at (213) 978-8130. She or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

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Transmittal