EXECUTIVE ORDER N-51-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, directing all residents statewide to obey all state public health directives, including the State Public Health Officer's order to all individuals living in the state to stay home or at their other place of residence, except as otherwise specified, including as needed to maintain continuity of operations of critical infrastructure sectors during the COVID-19 response; and

WHEREAS hard-working Californians who help grow and harvest the food in California's farms and fields, work in our food facilities, and deliver food from our food facilities are among the essential critical infrastructure workers serving on the front lines of the COVID-19 pandemic; and

WHEREAS the food supply sector and the reliability of our food supply are fundamental to the health of all Californians and are only possible during the COVID-19 pandemic because workers in this sector – farm workers, grocery workers, and food delivery workers, among others – continue to work in difficult situations; and

WHEREAS workers who are sick are more likely to go to work if they do not have paid leave, thereby increasing health and safety risks for their fellow workers and other members of the public with whom they, or the products of their work, come into contact; and

WHEREAS providing paid sick leave related to COVID-19 to food sector workers will reduce the spread of COVID-19 and otherwise mitigate the effects of COVID-19 among these workers, thereby promoting public health and safety; and

WHEREAS effective April 1, 2020, the federal Families First Coronavirus Response Act ("FFCRA") requires employers of fewer than 500 employees to provide emergency paid sick leave benefits to employees who may not be able to work because of COVID-19; and

WHEREAS notwithstanding the FFCRA, many food sector workers continue to lack access to paid sick leave; and

WHEREAS expanding the handwashing requirements under California's Retail Food Code to instruct food facilities to permit their workers to wash their hands on a regular and as-needed basis serves to mitigate and prevent the spread of COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. A Food Sector Worker, as defined in paragraph 2 below, shall be entitled to supplemental paid sick leave related to COVID-19 ("COVID-19 Supplemental Paid Sick Leave") as follows:

    a. Except as set forth in paragraph 3 below, a Hiring Entity (as defined in paragraph 3 below) shall provide COVID-19 Supplemental Paid Sick Leave to each Food Sector Worker (as defined in paragraph 2 below) who performs work for or through the Hiring Entity if that Food Sector Worker is unable to work due to any of the reasons below:

        i. The Food Sector Worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

        ii. The Food Sector Worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or

        iii. The Food Sector Worker is prohibited from working by the Food Sector Worker's Hiring Entity due to health concerns related to the potential transmission of COVID-19.

    b. A Food Sector Worker shall be entitled to the following number of hours of COVID-19 Supplemental Paid Sick Leave:

        i. A Food Sector Worker is entitled to 80 hours of COVID-19 Supplemental Paid Sick Leave if the Food Sector Worker satisfies either of the following criteria:

            1. The Hiring Entity considers the Food Sector Worker to work "full-time"; or

            2. The Food Sector Worker worked or was scheduled to work, on average, at least 40 hours per week for the Hiring Entity in the two weeks preceding the date the Food Sector Worker took COVID-19 Supplemental Paid Sick leave.

        ii. A Food Sector Worker who does not satisfy any of the criteria in subparagraph (i) above is entitled to an amount of COVID-19 Supplemental Paid Sick Leave as follows:

            1. If the Food Sector Worker has a normal weekly schedule, the total number of hours the Food Sector Worker is normally scheduled to work for or through a Hiring Entity over two weeks; or

2. If the Food Sector Worker works a variable number of hours, fourteen times the average number of hours the Food Sector Worker worked each day for or through the Hiring Entity in the six months preceding the date the Food Sector Worker took COVID-19 Supplemental Paid Sick leave. If the Food Sector Worker has worked for the Hiring Entity fewer than six months, this calculation shall instead be made over the entire period the Food Sector Worker has worked for the Hiring Entity.

iii. The total number of hours of COVID-19 Supplemental Paid Sick Leave to which a Food Sector Worker is entitled pursuant to subparagraphs (i) or (ii) above shall be in addition to any paid sick leave that may be available to the Food Sector Worker under Labor Code section 246.

iv. Food Sector Workers may determine how many hours of COVID-19 Supplemental Paid Sick Leave to use, up to the total number of hours to which the Food Sector Worker is entitled pursuant to subparagraphs (i) or (ii) above. Such COVID-19 Supplemental Paid Sick Leave shall be made available for immediate use by the Food Sector Worker, upon the oral or written request of the Worker to the Hiring Entity.

v. Over the period this Executive Order is in effect, a Hiring Entity is not required to provide a Food Sector Worker more than the total number of hours of COVID-19 Supplemental Paid Leave to which the Food Sector Worker is entitled pursuant to subparagraphs (i) or (ii) above.

c. Each hour of COVID-19 Supplemental Paid Sick Leave shall be compensated at a rate equal to the highest of:

i. The Food Sector Worker's regular rate of pay for the Food Sector Worker's last pay period;

ii. The State minimum wage; or

iii. The local minimum wage to which the Food Sector Worker is entitled.

Notwithstanding the foregoing, in no event shall a Hiring Entity be required to pay more than $511 per day and $5,110 in the aggregate over the period this Executive Order is in effect to a Food Sector Worker for COVID-19 Supplemental Paid Sick Leave taken by the Worker.

d. A Hiring Entity may not require a Food Sector Worker to use any other paid or unpaid leave, paid time-off, or vacation time provided by the Hiring Entity to the Food Sector Worker before the Food Sector Worker uses COVID-19 Supplemental Paid Sick

Leave, or in lieu of COVID-19 Supplemental Paid Sick Leave.

2. For purposes of this Executive Order, a Food Sector Worker is any person who satisfies all of the criteria set forth in subparagraphs (a) through (d) of this paragraph 2, as follows:

    a. The person satisfies any of the following criteria:

        i. The person works in one of the industries or occupations defined in Industrial Welfare Commission ("IWC") Wage Order 3-2001 § 2(B); IWC Wage Order 8-2001 § 2(H); IWC Wage Order 13-2001 § 2(H); or IWC Wage Order 14-2001 § 2(D); or

        ii. The person works for a Hiring Entity (as defined in paragraph 3 below) that operates a food facility, as defined in Health and Safety Code section 113789(a)-(b); or

        iii. The person delivers food from a food facility, as defined in Health and Safety Code section 113789(a)-(b), for or through a Hiring Entity.

    b. The person is exempt, as an Essential Critical Infrastructure Worker, from the requirements imposed by Executive Order N-33-20 or any other statewide stay-at-home order; and

    c. The person leaves the person's home or other place of residence to perform work for or through the person's Hiring Entity, as defined in paragraph 3 below.

3. For purposes of this Executive Order, Hiring Entity means a private sole proprietorship or any kind of private entity whatsoever—including, but not limited to, any kind of corporation, partnership, limited liability company, limited liability partnership, or any other kind of business enterprise, and specifically including any Delivery Network Company (as defined in Revenue and Taxation Code section 6041.5(b)) and any Transportation Network Company (as defined in Public Utilities Code section 5431(c))—that has 500 or more employees in the United States. For purposes of this paragraph 2, Code of Federal Regulations, Title 29, section 826.40(a)(1)-(2) shall be used to determine the number of employees that the Hiring Entity employs.

4. Notwithstanding paragraph 1 of this Executive Order, a Hiring Entity shall not be required to provide a Food Sector Worker with COVID-19 Supplemental Paid Sick Leave if the Hiring Entity provides the relevant Food Sector Worker, as of the effective date of this Executive Order, with a supplemental benefit, such as paid leave, that is payable for the reasons listed in paragraph 1(a) above and that would compensate the Food Sector Worker in an amount equal to or greater than the amount the Food Sector Worker would be compensated through taking COVID-19 Supplemental Paid Sick Leave to which the Food Sector Worker would otherwise be entitled under this Order.

5. In addition to such other remedies as may be provided by the laws of this State or its subdivisions (including, but not limited to, the remedies available to redress any unlawful business practice under the Unfair Competition Law, Business and Professions Code sections 17200 *et seq.*), the Labor Commissioner shall enforce the provision of COVID-19 Supplemental Paid Sick Leave. For purposes of such enforcement and to implement COVID-19 Supplemental Paid Sick Leave:

    a. The Labor Commissioner shall enforce the provision of COVID-19 Supplemental Paid Sick Leave as if such leave constitutes "paid sick days" under Labor Code sections 246(n), 246.5(b)-(c), 247, 247.5, and 248.5.

    b. A Food Sector Worker may file a complaint with the Labor Commissioner pursuant to Labor Code section 98 or 98.7.

    c. The principles in Labor Code section 249 apply to COVID-19 Supplemental Paid Sick Leave.

    d. By April 23, 2020, the Labor Commissioner shall make publicly available a model notice for purposes of Labor Code section 247. For purposes of COVID-19 Supplemental Paid Sick Leave only, if a Hiring Entity's Food Sector Workers do not frequent a workplace, the Hiring Entity may satisfy the notice requirement of Labor Code section 247(a) by disseminating notice through electronic means, such as by electronic mail.

    For purposes of the Labor Code sections cited in subparagraphs (a) through (c), in construing this Executive Order, all Food Sector Workers shall be considered "employees," any Hiring Entity shall be considered an "employer," and this Executive Order shall be considered part of the "article" in which those Labor Code sections are codified.

6. The requirement to provide COVID-19 Supplemental Paid Sick Leave as set forth in this Executive Order shall be effective during the pendency of any statewide stay-at-home orders issued by the State Public Health Officer, except that a Food Sector Worker taking COVID-19 Supplemental Paid Sick Leave at the time of the expiration of all such orders shall be permitted to take the full amount of COVID-19 Supplemental Paid Sick Leave to which that Food Sector Worker otherwise would have been entitled under this Order.

7. In addition to the other requirements of this Executive Order, and consistent with Health and Safety Code section 113952, employees working in any food facility, as defined by Health and Safety Code section 113789, shall be permitted to wash their hands every 30 minutes and additionally as needed. This paragraph shall be enforced pursuant to applicable provisions of the Retail Food Code.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 16th day of April 2020.

_____

GAVIN NEWSOM
Governor of California

ATTEST:

_____

ALEX PADILLA
Secretary of State