

June 10, 2021

File Number: 29HJ-334829

Via Email

The Honorable Alex Fisch, Mayor
The Honorable Daniel Lee, Vice Mayor
The Honorable Göran Eriksson, Council Member
The Honorable Yasmine-Imani McMorrin, Council Member
The Honorable Albert Vera, Council Member
City of Culver City – City Hall
9770 Culver Blvd.
Culver City, CA 90232

Re: *Proposed Ordinance Establishing Premium Hazard Pay for On-site Hospital Workers at Covered Hospitals – Proposed Amendment to the Effective Date.*

To the Members of the Culver City Council and Senior Deputy City Attorney Vidra:

On behalf of Southern California Hospital at Culver City (“SCHCC”), we respectfully request that the City consider revising the effective date of the above-referenced Proposed Ordinance by an additional 60 days. Should the Proposed Ordinance be adopted, this modest extension of time would enable SCHCC to obtain meaningful and timely judicial review. The alternative would almost certainly force SCHCC to choose between two harmful options: to risk substantial legal exposure as a result of the Proposed Ordinance’s “Enforcement” provisions or to comply with a potentially unconstitutional law without any practical or adequate remedy at law.

There is no assurance, given continuing and significant court delays and backlogs due to COVID-19, that SCHCC will be able to obtain a ruling on a preliminary injunction and, if needed, to obtain immediate review of the denial of that motion in an appellate court. The alternative would be to file a request for a TRO, and thereby risk a denial of a request for expedited relief because the Ordinance was not yet in effect. Over the last several months, a number of plaintiffs challenging other “Hero Pay” ordinances faced this exact dilemma. In some instances, the 120 day period for bonus payments substantially ran its course before effective judicial review was possible. From SCHCC’s point of view, the practical consequences of delay are no different from a denial of a request for relief.

There is, on the other hand, no prejudice whatsoever by delaying the effective date for an additional 60 days. First, it is never “in the public’s interest to allow the state to violate the requirements of federal law.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). This is particularly true with respect to constitutional rights. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”) (internal citation omitted). Second, to the extent that a 60 day

extension before payment obligations go into effect constitutes any hardship to SCHCC's employees, SCHCC is prepared to provide an undertaking or bond for the aggregate amount of Premium Hazard Pay, plus statutory interest. Third, there is nothing out of the ordinary in deferring the effective date of a law, at least for enforcement purposes, in order to permit parties sufficient time to comply with the law without having to risk sacrificing constitutional rights.

Therefore, we would propose the following amendment to Section 12 (Effective Date) of the Proposed Ordinance:

SECTION 12. EFFECTIVE DATE. Pursuant to Section 619 of the City Charter, this Ordinance shall take effect on the later of:

A. ~~th~~irty (30) days after its adoption; ~~or~~

B. Ninety (90) days after its adoption, provided that within thirty (30) days after adoption of the Ordinance, a Covered Hospital (1) commences a legal action in any court of competent jurisdiction to challenge the Ordinance; and (2) provides an undertaking or bond for the aggregate amount of the Premium Hazard Pay estimated to be incurred, plus interest at the statutory rate accruing from the thirty-first (31st) day after adoption of the Ordinance.

We look forward to your response.

Respectfully submitted,



David A. Schwarz
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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