

## New California COVID-19 Paid Sick Leave Mandate Effective March 29, 2021

On March 19, 2021, Governor Newsom signed new legislation (Senate Bill 95) that requires employers to provide additional paid sick leave of up to 80 hours (10 days) for employees who cannot work or telework due to COVID-19 related reasons.

Senate Bill 95 goes into effect on March 29, 2021, through September 30, 2021, and is retroactive beginning January 1, 2021. Small businesses employing 25 or fewer workers are exempt from the legislation but may offer supplemental paid sick leave and, if eligible, receive a federal tax credit. The new law applies to employees who work for a public or private employer with more than 25 employees, including those with collective bargaining agreements.

### Qualifying Reason for Supplemental Paid Sick Leave

- The worker is subject to a quarantine or isolation "period" related to COVID-19;
  - Employers may require employees excluded from the workplace due to COVID-19 exposures to exhaust their COVID-19 Supplemental Paid Sick leave to satisfy the "continued earnings" obligation of the Cal/OSHA Emergency Temporary Standard.
- A healthcare provider advises the worker to self-quarantine or isolate due to concerns related to COVID-19;
- The employee is attending an appointment to receive a vaccine for protection against contracting COVID-19;
- The employee is experiencing symptoms related to a COVID-19 vaccine that prevents the employee from being able to work;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for a family member (minor or adult child, parent, spouse, domestic partner, grandparent, grandchild, or sibling) who is subject to a quarantine or isolation period, or who has been advised to self-quarantine; or,
- The employee is caring for a child (regardless of age) whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

### Rate of Pay

Non-Exempt employees shall be paid at the highest of the following rates:

- The rate calculated in the same manner as the regular rate of pay for the workweek in which the covered employees uses sick leave, whether or not the employee works overtime in that workweek;
- The rate calculated by dividing the employee's total wages (not including overtime) by the employee's total hours worked in the full pay periods of the prior 90 days of employment;
- The state minimum wage; or,
- The local minimum wage to which the employee is entitled.

Exempt employees' supplemental paid sick leave shall be capped at \$511 per day, and \$5,110 total per employee.



## **Retroactive Supplemental Paid Sick Leave**

Upon the employee's oral or written request, the employer shall provide the covered employee with a retroactive payment of paid sick leave, so long as the employee previously took leave on or after January 1, 2021, that otherwise would have qualified under COVID-19 supplemental paid sick.

For such retroactive payments, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer must provide to the covered employee under the new mandate.

This retroactive payment shall be paid on or before the payday for the next full pay period after the covered employee's oral or written request. It must be reflected on the corresponding wage statement.

## **Important**

Supplemental Paid Sick Leave (Senate Bill 95) does not extend any current sick leave requirement, but is a new sick leave measure. All employees working for covered employers are eligible regardless of what was paid out before 12/31/2020.

An employer may not require that a worker use other paid or unpaid leave before the worker uses COVID-19 supplemental paid sick leave or in place of COVID-19 supplemental paid sick leave. COVID-19 supplemental paid sick leave will be in addition to any paid sick leave that may be available to the worker under Labor Code section 246.

Under the American Rescue Plan, the federal Family First Coronavirus Rights Act (FFRCA) Emergency Paid Sick Leave and Expanded FMLA extended the tax credit through September 30, 2021. Given the overlap, covered employers can take advantage of the FFCRA tax credit.

Employers providing supplemental paid sick leave under the FFCRA or local COVID-19 related sick leave ordinances may run concurrently and satisfy California's supplemental paid sick leave obligations if the reasons overlap and are paid at the same rate.

As a reminder, California has wage statement requirements for Paid Sick Leave, which requires an employer to itemize sick time balances. The supplemental paid sick leave would be a separate line item from any other state-mandated paid sick leave.

For additional guidance, please contact your Risk Advisor.

Click [here](#) for the Department of Industrial Relations COVID-19 Supplemental Paid Sick Leave FAQ page, which addresses questions regarding supporting documentation, requesting leave, calculating leave for part-time and variable hours employees, credits, recordkeeping, enforcement, and relation to other laws.

## **Employee Notice Posting**