



California Updates COVID-19 Supplemental Paid Leave Statute

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Beginning on March 29, 2021, Senate Bill 95 (SB 95) required employers to begin providing additional supplemental paid sick leave to employees because of COVID-19. SB 95 is much more robust than its predecessor, AB 1867. It expands the number of employees eligible for COVID-19 paid sick leave, expands the reasons an employee may take paid sick leave, and applies retroactively to January 1, 2021, which will require some employers who previously granted employees unpaid leave for COVID-19 related reasons to retroactively compensate those employees.

Eligibility

SB-95 applies to employers with more than 25 employees, at least one of whom works in California. Eligible employees are those in California who are unable to work or telework for one of the defined reasons.

Reasons for Leave

All employees working for covered employers are eligible for leave. Compared to AB 1867, SB 95 increases the number of qualifying reasons for which employees can take leave. Now, employees may take paid sick leave if they're unable to work or telework because they're:

- Subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention or a local health officer who has jurisdiction over the workplace.
- Advised by a health care provider to self-quarantine.
- Attending an appointment to receive a COVID-19 vaccine.
- Experiencing symptoms related to a COVID-19 vaccine that prevent the employee

from being able to work or telework.

- Experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Caring for a family member who is subject to an order or guidelines, or who has been advised to self-quarantine.
- Caring for a child whose school or place of care is closed for COVID-19 reasons.

Employers cannot request a medical certification before granting COVID-19 supplemental paid sick leave. Leave must be immediately provided to a covered employee upon an oral or written request.

Notwithstanding, it may be reasonable to ask for documentation before paying the “sick” employee if the employer has other information indicating that the employee is not requesting COVID-19 Supplemental Paid Sick Leave for a valid reason.

Covered Timeframe

The covered timeframe is from January 1, 2021 through September 30, 2021. However, beginning on March 29, the requirement to provide COVID-19 Supplemental Paid Sick Leave is retroactive back to January 1, 2021, which means that covered employees who took qualifying leave between January 1, 2021 and March 28, 2021, may request retroactive payment for that leave if it was not paid by the employer in the amount that is required under SB 95.

After the employee makes the request, the employer will have until the payday for the next full pay period to pay the retroactive COVID-19 Supplemental Paid Sick Leave amount owed. For example, if an eligible employee took three hours off work in January 2021 to attend a vaccine appointment, the employee may make an oral or written request for three hours of retroactive paid leave.

Amount of Leave Paid

Full-time employees are eligible for 80 hours of COVID-19 supplemental paid sick leave.

Part-time employees are eligible for an amount of leave equal to the number of hours they’re normally scheduled to work in two weeks. If an employee works a varying schedule, they’re entitled to hours equal to 14 times the average number of hours the employee worked each day in the prior six months, or over the total time of employment if less than six months.

The total number of hours of supplemental paid sick leave is in addition to any paid sick leave to which the employee is entitled under California law and employers may not require

employees to use other forms of paid time off before supplemental paid sick leave. Employees may choose to use other paid leave to supplement supplemental paid sick leave and earn their full compensation during their leave.

Rate of Pay Calculations

For nonexempt employees, each hour of supplemental paid sick leave is paid at the highest of the following rates:

- Rate calculated in the same manner as the regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, whether the employee actually works overtime in that workweek.
- Rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
- The state minimum wage.
- The local minimum wage to which the employee is entitled.

For exempt employees, the rate of pay must be calculated in the same manner that the employer calculates wages for other forms of paid leave.

The amount of pay is capped at \$511 per day and \$5,110 total per employee.

Other Leave Interactions

SB-95's supplemental paid sick leave runs concurrently with other forms of COVID-19 paid leave if these conditions are met:

- The employee took COVID-19 specific supplemental paid sick leave on or after January 1, 2021 (e.g., FFCRA emergency paid sick leave);
- The leave was for one of the reasons covered by SB-95 (see above);
- The leave was paid at the same or higher rate than leave covered by SB-95.

If these conditions are met, employers may apply supplemental paid leave and the other COVID-19 specific leave concurrently. This applies even if the employee took the COVID-19 specific leave before SB-95 went into effect. However, because SB 95 provides a fresh bank of leave, any leave granted last year under AB 1867 or the Families First Coronavirus Response Act (FFCRA) does not count towards the new leave obligations.

Notice and Wage Statements

Employers are required to provide notice to their employees informing them of their rights to supplemental paid sick leave under the new law. The Labor Commissioner created a model notice that employers may use for this purpose. Employers may download the posters and distribute as appropriate, including sending the notice electronically to employees who are telecommuting. Employers needed to provide notice before March 29, 2021 so if that hasn't been done at this point, it needs to be properly communicated as soon as possible.

Additionally, the COVID-19 supplemental paid sick leave must be reflected on employees' wage statements. The new law specifies that the COVID-19 supplemental paid sick leave must be set forth separately from other paid sick days. For employees with part-time or variable schedules, the law allows employers to do an initial calculation of leave time available with the notation "variable" next to it. Employers must still provide updated calculations when employees request to use their COVID-19 supplemental paid sick leave.

Conclusion

SB 95 is an expansive new law that creates extra administrative and financial burdens for California employers. As a result, employers should immediately institute the necessary administrative protocols to ensure compliance with SB 95 as well as preparing for any possible added financial impact through the end of September 2021. Due to the complexities of SB 95, as well as its interaction with other paid leave laws, it is prudent for California employers to seek legal guidance to verify not only compliance with the new law, but that they are also maximizing the potential for obtaining available federal tax credits through the now-voluntary FFCRA should the employer seek to offset the costs associated with this law.

ADDITIONAL RESOURCES

California Senate Bill 95 ([Link](#))

**CA Labor Commissioner 2021 COVID-19
Supplemental Paid Sick Leave FAQs ([Link](#))**

California Required Poster ([Link](#))