

Publications

California Enacts New COVID-19 Supplemental Paid Sick Leave

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Starting February 19, 2022, California employers will once again have to comply with supplemental paid sick leave for COVID-related reasons. California's new supplemental paid sick leave law (SPSL) is similar to – but markedly different than – the one California enacted in 2021. The key provisions of this new law are outlined below. Contact your Vorys lawyer if you have questions about COVID leave requirements in California or in other jurisdictions.

Expanded Coverage

Employees may use SPSL to care for their children, parents, spouses, registered domestic partners, grandparents, grandchildren, and siblings who are affected by COVID-19.

Two New Banks of Sick Leave

Employees are entitled to up to 80 hours of SPSL divided into two 40-hour banks of SPSL, each with different criteria and used for different reasons.

Up to 40 hours for COVID-Related Reasons

An employee can use up to 40 hours of SPSL if unable to work or telework because:

- They are subject to a quarantine or isolation period due to COVID-19.
- They have been advised by a health care provider to isolate or self-quarantine.
- They are experiencing COVID-19 symptoms and seeking a medical diagnosis.
- They are caring for a family member who is subject to a quarantine or isolation order or has been advised to isolate or self-quarantine by a health care provider.
- They are caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19.

These hours also may be used for appointments to receive a COVID-19 vaccine or vaccine booster and when experiencing symptoms related to a COVID-19 vaccine or vaccine booster that prevents the employee from working or teleworking. With respect to the latter, employers may limit the SPSL to 3 days or 24 hours; an employer require a health care provider's documentation that more leave is necessary if an employee requests additional leave.

Up to a 40 Hours for Positive COVID-19 Tests

An employee who tests positive or cares for a family member who tests positive may qualify for up to an additional 40 hours of leave – without first exhausting the leave provided above. The employer may require proof of a positive COVID-19 test result. An “employer has no obligation to provide additional COVID-19 supplemental paid sick leave ... for an employee who refuses to provide documentation of the results of the test ... upon the request of the employer.” Additionally, if the employee is using this 40-bank for their own positive test, their employer may require testing on day five after the initial positive test.

Exhaustion of Other Leave Prohibited

Employees may not be required to use any other paid or unpaid time off before, or instead of, using SPSL. Further, employers may not require employees to use SPSL when the employee is entitled to exclusion pay under Cal/OSHA's Emergency Temporary Standard (ETS). This means that an employee who is excluded from work under ETS cannot be required to first exhaust their SPSL before getting exclusion pay.

Itemized Wage Statement Requirements

Employers must provide employees with written notice, either through their itemized wage statement or a separate writing provided on each pay date with the payment of wages that sets forth the amount of SPSL the employee has used through that pay period, including if no SPSL was used (in which case, the employer must list zero hours on the wage statement). This information must be set forth separately from regular paid sick days. It is not clear whether the employer is also required to list out the amount of SPSL the employee has remaining or whether each bank of leave needs to be listed out separately. Hopefully, forthcoming FAQs will address those issues.

Calculating the Rate of Pay for SPSL

SPSL must be paid at the employee's regular rate of pay. For non-exempt employees, this means the regular rate is calculated either: (1) in the same manner as the regular rate of pay for the week in which the employee uses SPSL, excluding any overtime pay; or (2) by dividing the total wages, not including overtime pay, by the total non-overtime hours worked in the full pay periods over the prior 90 days of employment. For exempt employees, the regular rate is calculated in the same manner as other forms of paid leave.

An employee's pay for SPSL is capped at \$511 per day and \$5,110 in the aggregate.

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VORYS COVID-19 TASK FORCE

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).