

Publications

New Law Provides COVID-19 Supplemental Paid Sick Leave for California Employees

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On September 9, 2020, California Governor Gavin Newsom signed Assembly Bill 1867, which requires private employers with 500 or more employees nationwide to provide COVID-19 supplemental paid sick leave benefits to qualifying employees. The new law is already effective and will expire on December 31, 2020, or upon the expiration of any extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act. (FFCRA).

Covered Employers

The new law applies to private employers with 500 or more employees in the United States doing business in California.

The law also covers public and private employers that employ health care providers and emergency responders who were excluded from paid sick leave under the FFCRA.

Covered Employees

The law covers any employee who works for a covered employer and leaves his or her home or residence to perform work for the employer.

Qualifying Reasons for Leave

COVID-19 supplemental paid sick leave (CPSPL) may be used for any of the following reasons:

1. The covered employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The covered employee is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
3. The covered employee is prohibited from working by his or her employer due to health concerns related to the potential transmission of COVID-19.

Guidance issued by the California Department of Labor Standards Enforcement (DLSE) provides that being “subject to a federal, state, or local quarantine or isolation order” does not include a general stay-at-home order. Rather, such order must be specific to the workers’ circumstances. For example, an order that directs individuals who live with someone who has COVID-19 to quarantine would satisfy the eligibility requirement for taking CSPSL.

Additionally, unlike the FFCRA and many California local COVID-19-related leave ordinances, the new law does not provide leave for employees to care for children whose school or place of care is closed for COVID-19-related reasons.

Amount of Paid Leave Available

The amount of CSPSL available to employees under the new law depends on the employee’s regular number of hours worked.

- Full-time employees, those considered full-time by the employer, or those who worked or were scheduled to work, on average, at least 40 hours per week in the two weeks preceding the date the employee takes CSPSL, are entitled to 80 hours of CSPSL.
- Part-time employees with normal weekly schedules are entitled to CSPSL in the amount equal to the average number of hours that the employee works over a two-week period.
- Part-time employees with variable schedules are entitled to CSPSL in the amount of 14x the average number of hours the employee worked each day for the employer in the six months preceding the date (or the total number of months the employee has worked for the employer if the employee has been employed for more than two weeks but less than six months) the employee takes CSPSL.
- Part-time employees with variable schedules who have worked for the employer for less than two weeks are entitled to CSPSL in the amount equal to the total number of hours the employee has worked for the employer.

Of note, a qualifying employee is entitled to take CSPSL immediately upon the employee’s oral or written request. An employer may not deny an employee’s request for CSPSL based solely on a lack of certification from a health care provider.

Rate of Pay

Employees using CSPSL must be paid at an hourly rate equal to the highest of the following:

1. The employee’s regular rate of pay for the last pay period;
2. The state minimum wage; or
3. The local minimum wage.

However, the new law limits the amount of CSPSL paid to any employee to \$511 per day or \$5,110 total.

Interaction with Existing Leave Laws and Policies

Under the new law, CSPSL is provided in addition to paid sick leave required under state law pursuant to California Labor Code § 246. Further, employers may not require an employee to use any other paid or unpaid leave, paid time off, or vacation time before using or in lieu of CSPSL.

However, employers may offset their obligation to provide CSPSL if an employer already provides supplemental paid leave to employees that is (1) payable for the same reasons as provided under the new law, and (2) compensates employees in an amount equal or greater than the amount provided under the new law. Such an offset may include benefits that the employer already paid pursuant to local COVID-19-related leave ordinances.

Notice and Wage Statement Requirements

Employers must post the applicable poster, published by the DLSE, in a conspicuous place in the workplace. If an employee does not frequent the workplace, employers may disseminate the notice electronically.

Employers must also provide written notice of the amount of CSPSL available to an employee on the employee's wage statement or in a separate written document provided on designated paydays. This requirement is effective the first full pay period after September 19, 2020. This means that covered employers must act immediately to comply with the new law's wage statement requirements.

Enforcement & Penalties

If CSPSL is unlawfully withheld, an employer may be subject to an administrative penalty of at least \$250 per day, but not to exceed \$4,000 in total. The Labor Commissioner or Attorney General may also bring a civil action for other legal or equitable relief, including reinstatement, back pay, payment of sick days unlawfully withheld, and liquidated damages.

Conclusion

The very short period between the passing of California's new CSPSL law and its effective date will likely catch employers by surprise. Employers with employees in California should review the new CSPSL requirements immediately to ensure their policies and procedures are compliant.

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Vorys COVID-19 Task Force

Outside of this new law, employers continue to face a **myriad of issues** as COVID-19 continues to spread and impact communities and workplaces. We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

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.