

# California Labor Commissioner Releases FAQ and Model Notices for Statewide COVID-19 Supplemental Paid Sick Leave

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On September 9, 2020, [the Governor signed Assembly Bill 1867](#) ("AB 1867") which mandated both food sector employers and other industries, including employers with 500 or more employees, to provide supplemental paid sick leave ("COVID-19 Supplemental PSL"). The California Labor Commissioner, charged with enforcement of the new laws, has issued a [Frequently Asked Questions Page](#) ("FAQ") regarding both new supplemental leaves.

## What are some of the key clarifications?

1. The Labor Commissioner clarifies that the food sector worker sick leave that was previously required per the Governor's Executive Order ("E.O.") issued on April 16, 2020, is now codified by AB 1867 under Labor Code Section 248. Non-food sector employers were provided a "10-day grace period" from the enactment of the law. The FAQs make clear that non-food sector employers must begin providing COVID-19 Supplemental PSL starting **September 19, 2020**.
2. The Labor Commissioner also clarifies that being "subject to a Federal, State or local quarantine or isolation order" does not include the state's stay-at-home order but is referring to an order that is specific to the worker's circumstance. For example, an order that directs an individual who lives with someone who has COVID-19 to quarantine themselves would satisfy the eligibility requirement for taking COVID-19 Supplemental PSL.
3. The Labor Commissioner also stated that a hiring entity cannot deny a worker COVID-19 Supplemental PSL based solely on a lack of certification from a healthcare provider. However, a hiring entity may reasonably ask for documentation before paying the sick leave if it has other information indicating the worker is not requesting COVID-19 Supplemental PSL for valid purposes.
4. The FAQs detailed that food sector workers, including both employees and independent contractors, have a right to COVID-19 Supplemental PSL under the prior E.O. and now under

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the new Labor Code 248. However, COVID-19 Supplemental PSL for non-food sector workers does not apply to independent contractors.

5. The Labor Commissioner also explained that public employers are not required to provide COVID-19 Supplemental PSL.
6. The FAQs highlighted that firefighters who were scheduled to work more than 80 hours in the previous two weeks, can take as many hours as they were scheduled, but they are limited to the maximum of \$511/day or \$5,110/total pay.
7. The Labor Commissioner also provides a more detailed explanation of the calculation of leave entitlement for part-time workers who do not have a set schedule. The Labor Commissioner provides the calculations for both a part-time worker with a variable schedule who have worked for the employer for more than 14 days and less than 14 days, which was not clear in the legislation. The Labor Commissioner confirmed that a worker that is considered full-time (40 hours/week) is entitled to 80 hours of COVID-19 Supplemental PSL.
8. The Labor Commissioner also clarifies that for a food-sector employer to receive credit for providing COVID-19 related paid sick leave, the employer must:
  - have had an existing supplemental paid benefits program **as of April 16, 2020**;
  - have paid a worker at a rate **equal to or greater than what the worker is entitled to under California law**.

Such a supplemental paid leave program includes those that provided supplemental paid sick leave under the E.O or a policy that provided the same or better supplemental sick leave benefits. Policies that do not meet the requirements of the E.O.—including those that partially, but do not fully, replace a worker's pay (up to \$511 per day); which provide fewer hours of leave than the E.O; or that do not provide a paid benefit for COVID-19-related reasons—**do not meet the criteria to receive a credit**. Employers may always provide greater benefits to their workers.

For non-food sector employers seeking a potential credit for prior supplemental sick leave policies, the employer must have had an existing supplemental sick leave program enacted after March 4, 2020, and before September 19, 2020.

Additionally, an employer that provided COVID-19 related paid sick leave pursuant to a local paid sick leave ordinance may count that time towards its obligation under COVID-19 Supplemental PSL. If the local law provides a different rate than what is required under COVID-19 Supplemental PSL, the employer must provide the higher rate to comply with both laws. The non-food sector employers can retroactively provide supplemental pay for certain sick leave paid to employees if below the current requirement. While the food sector employers do not have such a right since they were subject to the E.O.

9. The Labor Commissioner also states employers are required to display the applicable poster(s), in a conspicuous place that contains information about COVID-19 Supplemental PSL. The Labor Commissioner has also released model notices for the [Supplemental Paid Sick Leave for Food Sector Workers](#) and [Supplemental Paid Sick Leave for Non-Food Sector](#)

[Employees](#). The FAQ notes that if covered workers do not frequent a workplace, the employer may satisfy the notice requirement by providing notice through electronic means.

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