

California COVID-19 Supplemental Paid Sick Leave Act (AB 1867): Paid Leave, Notice and Posting Requirements Effective Immediately

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OVERVIEW

Employers with more than 500 employees nationally, and employers of healthcare-provider and emergency-responder employees previously exempted from Families First Coronavirus Response Act (FFCRA) requirements, must provide California employees with two weeks of supplemental paid sick leave for specified COVID-19 reasons. In addition to providing paid leave, the law requires employers to comply with urgent-notice and posting requirements that are administratively burdensome. Employers subject to the new requirements should work with legal counsel to develop practical solutions for immediate compliance.

IN DEPTH

On September 9, 2020, California Governor Gavin Newsom signed into law Assembly Bill 1867, the California COVID-19 Supplemental Paid Sick Leave Act (the Act), which created new Labor Code §§248 (food service workers) and 248.1 (covered workers) and amended Labor Code §248.5 (paid sick days). The new law is intended to bridge the gap between the FFCRA, which applied only to employers with fewer than 500 employees, and Executive Order No. N-51-20, which provided leave only to food-sector workers.

Effective immediately, employers with 500+ employees nationally, and employers of healthcare-provider and emergency responder employees previously exempted from FFCRA requirements, will need to make California supplemental paid sick leave available to all employees by September 19, 2020.

To be eligible for supplemental paid sick leave, employees must be required to leave their home to perform their work and must be unable to work because they are:

- Subject to a federal, state or local quarantine or isolation order related to COVID-19.
- Advised by a healthcare provider to self-quarantine or self-isolate due to concerns related to COVID-19.

- Prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19.

Full-time employees are entitled to two weeks (80 hours) of supplemental paid sick leave, while part-time employees may have variable entitlements depending on their past schedules and hours worked. The applicable rate of pay for supplemental paid sick leave is the highest of the employee's regular rate of pay, the state minimum wage, or the local minimum wage. However, supplemental paid sick leave is capped at \$511 per day and \$5,110 total per employee.

Employees are entitled to supplemental paid sick leave under the new law *in addition to* any paid sick leave made available to them under an employer's existing non-COVID-related paid sick leave policies. Further, employers cannot require that employees exhaust other available types of leave prior to using their California supplemental paid sick leave entitlement. However, if an employer has already put in place some type of COVID-19 supplemental leave, it can be credited toward such leave established by the California COVID-19 Supplemental Paid Sick Leave Act.

The law contains immediate notice and posting requirements, which include a poster that must be made available to employees by September 19, 2020, as well as mandatory printing of the amount of available California COVID-19 supplemental paid sick leave balances on employees' wage statements by the next pay period following September 9, 2020. The California Labor Commissioner has provided a model poster for employers' use that can be accessed by clicking [here](#).

The Act expressly authorizes the labor commissioner to enforce its requirements, including investigating violations and ordering temporary relief to mitigate violations. In the event COVID-19 supplemental paid sick leave is unlawfully withheld, the employer may be subject to an administrative penalty of at least \$250 per day, a penalty not to exceed \$4,000 in the aggregate. The state labor commissioner or attorney general may also bring civil action to collect other legal or equitable relief, including reinstatement, back pay, the payment of sick days unlawfully withheld, and liquidated damages. While there is no private right of action under the new law, employees may also be able to assert Private Attorney General Act (PAGA) claims for violations of the new law.

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