

California Does It Again: Employers Not Subject to FFCRA Must Now Provide COVID-19 Supplemental Sick Leave

Article By:

Michael F. Ryan

On September 9, 2020, California Gov. Gavin Newsom signed Assembly Bill 1867 (AB 1867). The new law considerably broadens access to paid sick leave beyond the Families First Coronavirus Response Act (FFCRA) — essentially providing supplemental paid sick leave benefits to all California workers who test positive for or have been exposed to COVID-19.

Newsom's office said that AB 1867 "closes the gaps in paid sick days" that exist in the FFCRA by expressly including employers with over 500 workers and food sector employers, as well as entities that employ first responders and health care workers and have utilized their discretionary authority under the FFCRA to exempt such employees from paid sick leave benefits. The U.S. Department of Labor [recently revised](#) the FFCRA "final rule" to narrow the definition of health care providers and first responders who can be denied FFCRA benefits, but AB 1867 is much broader than the FFCRA even after the recent revisions.

Under AB 1867, non-food sector employees are covered if:

1. They work for an employer with 500 or more employees nationwide, OR an entity that employs health care providers or emergency responders that has elected to exclude such employees from benefits under the FFCRA; and
2. They leave home to perform work.

Covered workers may take leave if they are unable to work for any of the following reasons:

1. They are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. They are advised by a health care provider to self-quarantine or self-isolate due to COVID-19-related concerns; or
3. They are prohibited from working by the employer due to health concerns related to the

potential transmission of COVID-19.

The new law also codifies a prior executive order of California's governor that provided similar benefits for food sector employees.

AB 1867 provides full-time workers up to two weeks (80 hours) off at full pay if they're sick or have to quarantine (with a cap of \$511 per day or \$5,110 in total). Lesser amounts are provided for part-time employees commensurate with their regularly scheduled hours. COVID-19 supplemental paid sick leave under AB 1867 must be paid at an hourly rate at the highest of: (1) the regular rate of pay for the last pay period, (2) state minimum wage, or (3) local minimum wage.

The law further requires an update to wage statements (or a separate writing) to provide notice of the amount of supplemental paid sick leave available each pay period. Non-food sector employers must also post this [notice](#), while food sector employers must post this [notice](#).

AB 1867 technically went into effect immediately upon its signing on September 9, 2020, but it only required COVID-19 supplemental paid sick leave to be provided beginning no later than September 19, 2020. Supplemental paid sick leave under AB 1867 will expire on December 31, 2020, or upon the expiration of any extension of FFCRA benefits, whichever is later.

California employers who have questions about compliance with AB 1867 should consult with trusted employment counsel immediately. Employers with operations outside of California should be on the alert for similar legislation in other states, particularly given the uncertainty of additional federal action.

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