

California Expands COVID-19 Supplemental Paid Sick Leave

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On March 19, 2021, California Governor Gavin Newsom signed Senate Bill 95 (SB95), significantly expanding California's COVID-19 Supplemental Paid Sick Leave (CPSL). This latest legislation now requires any California employer with more than 25 employees to provide CPSL in addition to regular paid sick leave offered. The new law also authorizes CPSL for providers of in-home supportive services and waiver personal care services.

IN DEPTH

RETROACTIVITY

SB95 is retroactive to January 1, 2021, meaning any unpaid leave that has already been granted for any of the qualifying reasons below may require reimbursement. In order to be paid for leave already taken for a qualifying reason, employees must make an oral or written request to the employer. The employer must then issue payment on or before the payday for the next pay period. Any retroactive CPSL counts toward the employee's CPSL entitlement.

START DATE

The new law takes effect on March 29, 2021, so employers have until then to update their policies and print the amount of available leave on the wage statement. CPSL remains in effect through September 30, 2021.

AMOUNT OF LEAVE AVAILABLE

A full-time employee (or someone who has worked on average 40+ hours per week in the two weeks before leave is taken) is entitled to 80 hours of CPSL. Part-time employees are entitled to take 14 times the average number of hours worked each day for the last six months before taking the leave (i.e., the total number of hours worked in last six months divided by 182 days equals the daily hours; then multiply the daily hours by 14 for the total hours entitlement). This leave obligation is separate

and apart from any leave provided in 2020, so whether or not someone exhausted their 2020 California Supplemental COVID-19 leave does not affect the 80-hour entitlement for 2021 for full-time employees (or likewise the prorated version for part-time employees).

QUALIFYING REASONS FOR LEAVE

The qualifying reasons for leave have also been expanded for 2021. An employee is now entitled to leave if the employee is unable to work or telework because of any one of the following reasons:

1. **Caring for Yourself.** The employee is subject to a quarantine or isolation period related to COVID-19, has been advised by a healthcare provider to quarantine because of COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
2. **Vaccine-Related.** The employee is attending an appointment to receive a COVID-19 vaccine or is experiencing symptoms related to a COVID-19 vaccine.
3. **Caring for a Family Member.** The employee is caring for a family member who is subject to a quarantine or isolation period related to COVID-19 or who has been advised to self-quarantine, or the employee is caring for a child whose school or place of care is closed or unavailable because of COVID-19 on the premises.

RATE OF PAY

For each hour of 2021 CSPSL that a non-exempt, covered employee is entitled to receive, the employee must be paid the highest of the following (subject to a cap):

- The employee's regular rate of pay for the workweek in which the leave is taken
- A rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment
- The state minimum wage
- The local minimum wage

For exempt employees, CSPSL must be calculated in the same way that the employer calculates wages for other forms of paid leave.

The maximum benefit is \$511 per day or \$5,110 in the aggregate. Employees who earn more than the maximum benefits may use other available paid leave to fully compensate them for their time away from work. If the federal government passes a federal supplemental paid sick leave bill that provides for a higher maximum benefit, the cap under SB95 will automatically increase to match the federal benefit.

CERTIFICATION OF LEAVE

An employee is entitled to CSPSL immediately upon the employee's oral or written request, and CSPSL cannot be conditioned upon a medical certification. However, it may be reasonable in some circumstances to request documentation before paying the sick leave where the employer has other information indicating that the covered employee is not requesting CSPSL for a valid purpose.

INTERACTION WITH LOCAL PAID SICK LEAVE ORDINANCES

Employers can count the COVID-19 related supplemental paid sick leave provided pursuant to a local paid sick leave ordinance toward this 2021 CSPSL obligation so long as the leave provided is for a reason listed under the 2021 COVID-19 Supplemental Paid Sick Leave law and is at least at the same rate of pay as this law requires.

WAGE STATEMENT REQUIREMENT

Employers must list CSPSL on the paystub for employees as a separate line item, separate and apart from regular California paid sick leave. For variable-scheduled part-time employee paystubs, employers must calculate the initial amount of CSPSL available as of the first printing and put (variable) next to it on the wage statement. The employer would then do the actual calculation if/when the employee actually requests the leave.

MODEL NOTICE REQUIREMENT

Employers must post the [model notice](#) provided by the California Department of Industrial Relations (DIR) in a conspicuous place in the workplace no later than the effective date. If employees do not frequent a workplace, then the notice may be sent via email. The DIR has also issued FAQs available [here](#).

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