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California's COVID-19 Supplemental Paid Sick Leave Returns

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On March 19, 2021, Governor Gavin Newsom signed Senate Bill No. 95 (SB95) and revived California's COVID-19 Supplemental Paid Sick Leave. By March 29, 2021, employers of more than 25 employees must provide Supplemental Paid Sick Leave for covered employees who are unable to work or telework due to concerns related to COVID-19 through at least September 30, 2021.

An employee qualifies as a covered employee entitled to Supplemental Paid Sick Leave if the employee is unable to work or telework due to any of the following reasons:

- The employee is required to quarantine or submit to an isolation period pursuant to local, state or federal guidance.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.
- The employee is experiencing symptoms related to a COVID-19 vaccine.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for a family member who has been advised to self-quarantine by a health care provider, or is required to quarantine or submit to an isolation period pursuant to local, state or federal guidance.
- The employee is caring for a child, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

Please note that California's Labor Commissioner has stated that a general stay-at-home order is not the equivalent of a requirement to quarantine or submit to an isolation period. An employee cannot qualify as a covered employee entitled to Supplemental Paid Sick Leave solely because they are subject to the general stay-at-home orders in place in California.

Supplemental Paid Sick Leave is available to a covered employee immediately upon oral or written request by a covered employee. The leave is not conditioned on medical certification.

A covered employee who works full time is entitled to eighty (80) hours of Supplemental Paid Sick Leave. A covered employee who was scheduled to work, on average, at least 40 hours per week in the 2 weeks before the date of the leave, is also entitled to eighty (80) hours of Supplemental Paid Sick Leave. A covered employee who works part-time is entitled to Supplemental Paid Sick Leave commensurate with their schedule and length of employment, as described below:

- A covered employee who works a regular schedule is entitled to the total number of hours the employee is normally scheduled to work over two weeks.
- A covered employee who works a variable schedule is entitled to 14 times the average number of hours the employee worked per day in the six months preceding the leave.
- A covered employee who works a variable schedule and has worked for the employer for 14 days or less is entitled to the total number of hours the employee has worked for the employer.

The obligation to provide Supplemental Paid Sick Leave is in addition to regular paid sick leave. Employers are prohibited from requiring a covered employee to use other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before that employee uses Supplemental Paid Sick Leave or in lieu thereof, except in limited circumstances.

A nonexempt covered employee must be compensated at the employee's regular rate of pay as determined by the workweek in which the employee uses the leave, the 90-day period before the leave, or the state or local minimum wage, whichever regular rate is the highest. An exempt covered employee must be compensated in the same manner as the employer calculates wages for other forms of paid leave time. Under no circumstances is an employer required to pay more than \$511 per day and \$5,110 in total Supplemental Paid Sick Leave benefits.

The law applies retroactively to January 1, 2021. This means that covered employees who took qualifying leave between January 1, 2021 and March 28, 2021, can request payment for that leave if it was not paid by the employer in the amount that is required under this law. Employers may receive a credit if they voluntarily provided a covered employee with other COVID-19 related paid sick leave between January 1, 2021 and March 28, 2021, provided that the leave taken by the covered employee and payments made by the employer meet the requirements of the 2021 Supplemental Paid Sick Leave law.

Employers must display a poster describing the Supplemental Paid Sick Leave issued by the California Labor Commissioner, available [here](#). If employees are working remotely, employers may satisfy the notice requirement by disseminating a copy of the poster via electronic means, including e-mail.

Buchalter is committed to helping our clients assess their rights with respect to COVID-19 and stands ready to assist in navigating these uncharted waters. If you have questions regarding Supplemental Paid Sick Leave, please contact a Buchalter attorney.



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