

CLIENT ALERT

California Enacts New COVID-19 Supplemental Paid Sick Leave Law

September 15, 2020

On September 9, 2020, Governor Newsom of California signed a bill into law that eliminates coverage gaps and provides paid sick leave for every California employee who is not otherwise covered by the Families First Coronavirus Response Act (the FFCRA). The law applies to employers with over 500 employees as well as public and private employers of emergency responders and health care employees who elected to exclude these employees from emergency paid sick leave under the FFCRA. Covered employers must provide this leave no later than September 19, 2020. The law will remain in effect through December 31, 2020 or upon the expiration of any federal extension of the FFCRA, whichever is later. However, any employee who is out on COVID-19 supplemental paid sick leave at the time the law expires will be allowed to take the full amount of leave to which they are entitled. The law will be enforced by the California Labor Commissioner and allocates \$100,000 to the Commissioner for staffing resources to implement and enforce its provisions.

Qualifying Reasons for COVID-19 Supplemental Leave

This law entitles covered employees to COVID-19 supplemental paid sick leave if the employee is unable to work due to any of the following reasons:

- The covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The covered worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.
- The covered worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

Amount of Leave

Full time employees, or those scheduled to work, on average, at least 40 hours per week in the two weeks preceding the date the employee seeks to use the paid sick leave, are entitled to 80 hours of leave. Employees who do not work full time and have a normal weekly schedule are entitled to the total number of hours the employee is normally scheduled to work for the employer over two weeks. Employees who work a variable number of hours are entitled to 14 times the average number of hours the employee worked each day for the hiring entity in the six months preceding the leave. If the employee has worked for the employer less than six months but more than 14 days, this calculation is instead made over the entire period the employee has worked for the employer.

Compensation

COVID-19 supplemental leave is paid at the highest of (1) the employee's regular rate of pay; (2) the state minimum wage; or (3) applicable local minimum wage, up to \$511/day and \$5,100 in the aggregate.

Notice Requirements

Employers are required to post a notice regarding employee rights pursuant to this new law. The Labor Commissioner will publish model notice by September 16, 2020. If an employer's workers do not frequent a physical workplace, the employer can satisfy the posting requirements by disseminating the notice through email or other electronic means. Additionally, the law requires employers to track the amount of COVID-19 supplemental paid sick leave accrued and used by an employee on the employee's wage statements and retain records accordingly, just as employers are required to do for regular sick leave requirements under California's Healthy Workplace Healthy Family Act.

Interaction of COVID-19 Supplemental Paid Sick Leave and Existing Leave Policies

Employers may not require employees to use any other paid or unpaid leave, paid time off, or vacation time before the employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave. However, employers who already provide covered employees with supplemental paid leave that is payable for the qualifying reasons listed above that would compensate the worker in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave—including leave provided pursuant to federal or local law—may count those hours towards the hours required under this new law. Additionally, if the employer already provided supplemental paid leave between March 4, 2020 and the effective date of this law, but did not compensate the employee in an amount equal to or greater than the COVID-19 supplemental paid sick leave, the employer may retroactively provide supplemental pay to the worker to satisfy its obligations.

Additional Considerations for Food Sector Employees

The law explicitly provides that food sector employees are entitled to COVID-19 supplemental paid sick leave as provided above, codifying the Governor's prior Executive Order N-51-20, and further requires that food sector employees be permitted to wash their hands every 30 minutes and additionally as needed.

Employers in California should take this opportunity to revisit their paid sick leave policies to confirm that they are in compliance with all federal, state, and local emergency paid sick leave laws. Additionally, employers in the healthcare industry who have not provided FFCRA leave under the federal law's exception should review carefully—particularly in light of the new [DOL Rule](#) modifying the definition of exempted healthcare employees—to determine whether it is better from a business standpoint to offer FFCRA leave or COVID-19 supplemental paid sick leave. In evaluating these issues, businesses should reach out to counsel as needed to ensure compliance with all applicable laws.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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