

Publications

California Enacts a New, Retroactive COVID-19 Paid Supplemental Sick Leave Requirement

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Beginning March 29, 2021, California employers with 25 or more employees must provide supplemental sick leave to employees affected by COVID-19. This is a new bank of leave, which means that employers with 500 or more employees that already provided paid supplemental sick leave in 2020 also have to provide this new leave. The law is retroactive to January 1, 2021. And while the law expires on September 30, 2021, an employee taking leave at that time can still take the full amount of leave. Key provisions of the new mandate are discussed below. Contact your Vorys lawyer if you have questions about these new requirements or about other COVID-specific leave requirements where your businesses operate.

Amount of Supplemental Paid Sick Leave

Full-time employees are entitled to 80 hours of paid leave. An employee is “full-time” if he or she worked or was scheduled to work, on average, at least 40 hours per week in the two weeks before the supplemental paid sick leave is taken.

Part-time employees are entitled to a pro-rata paid sick leave benefit. An employee with a normal weekly schedule receives paid leave hours equaling the total number of hours they are scheduled to work over two weeks. Employees with variable hours are entitled to leave time equal to 14x the average number of hours they worked each day in the six months before the leave date. If they have worked less than six months, the calculation is made over the entire period of employment.

Qualifying Reasons

Employees are entitled to paid sick leave if they are unable to work or telework because they are:

1. Attending an appointment to receive a vaccine for COVID-19;
2. Experiencing symptoms related to a COVID-19 vaccine that prevent the employee from working;

3. Experiencing symptoms of COVID-19 and are seeking medical diagnosis;
4. Caring for a family member who is subject to quarantine or an isolation period or who has been advised to self-quarantine;
5. Caring for a child (regardless of age) whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.
6. Subject to quarantine or isolation related to COVID-19 or were advised by a health care provider to self-quarantine or isolate due to COVID-19.

Rate of Pay

For nonexempt employees, supplemental paid sick leave will be paid at the **highest** of the following rates:

1. The rate calculated in the same manner as the regular rate of pay for the workweek in which the employees uses sick leave, whether or not the employee actually works overtime in that workweek;
2. The rate calculated by dividing the employee's total wages (not including overtime) by the employee's total hours worked in the full pay periods of the prior 90 days of employment;
3. The state minimum wage; or
4. The local minimum wage to which the employee is entitled.

For exempt employees, the rate of pay is calculated in the same manner as the employer calculates wages for other forms of paid leave, capped at \$511 per day and \$5,110 total.

Retroactive Payments

If an employee took leave on or after January 1, 2021 that otherwise would have qualified under COVID-19 supplemental paid sick leave and the employer did not provide paid leave, then upon the employee's request, the employer must provide a retroactive payment of that compensation. For these retroactive payments, the number of hours of leave related to the payment count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer must provide to the employee. The retroactive payment must be paid on or before the payday for the next full pay period after the employee's oral or written request and reflected on the corresponding wage statement.

Notice Requirements

Employers must conspicuously display the required poster, available here: [2021 COVID-19 Supplemental Paid Sick Leave \(ca.gov\)](#). Employers may provide the notice electronically only for employees who do not frequent the workplace.

Additionally, employers must include the amount of available supplemental paid sick leave on employees' itemized wage statements or in a separate writing. The supplemental paid sick leave must be set forth separately from employees' regular paid sick leave. For part-time employees with variable schedules, the employer satisfies the wage statement obligation by providing an initial calculation of supplemental paid sick leave available and indicating "(variable)" next to that calculation on initial and subsequent wage statements; this calculation must be updated when an employee requests to use leave or requests his or

her payroll records.

Relationship with Other Leaves

Employers who already provide COVID-19-specific supplemental paid sick leave for leave taken after January 1, 2021 (that is available for the same reasons and paid at the same rate) may count those hours towards the supplemental paid sick leave obligation. This means leave provided under other federal or local ordinances for reasons overlapping with this new law can count towards the obligation.

An employer may not require an employee to use other paid or unpaid leave before the worker uses COVID-19 supplemental paid sick leave or in lieu of it. An employer may require an employee to first exhaust their COVID-19 supplemental paid sick leave in order to satisfy the “continued earnings” obligation of California’s Emergency Temporary Standard.

Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).