

California Expands Supplemental Paid Sick Leave to September 2021

WRITTEN BY

[Mark Payne](#) | [Kristalyn Lee](#) | [Emily Reber](#)

Who Needs to Know

Private employers in California with 26 or more employees, and certain public entity employers not covered under the 2020 supplemental paid sick leave law.

Why It Matters

The law creates a statutory right to paid sick leave for covered employees, in addition to paid time off benefits that employees receive by law or policy. In some ways, the new law augments its 2020 predecessor, expanding coverage to smaller employers and providing additional qualifying reasons for leave.

On March 19, Governor Newsom signed SB 95, reviving the mandate that California employers provide supplemental paid sick leave for COVID-19-related absences. The law creates a statutory right to paid sick leave for covered employees, in addition to paid time off benefits that employees receive by law or policy. In some ways, the new law augments its 2020 predecessor, expanding coverage to smaller employers and providing additional qualifying reasons for leave.

SB 95 goes into effect March 29, and applies retroactively to January 1, 2021, meaning employers may designate COVID-19-related leave already taken this year as supplemental paid sick leave. The law remains effective through September 30, 2021.

Who Is Covered?

The new law applies to private employers with 26 or more employees and to certain public entity employers not covered under the 2020 supplemental paid sick leave law. By contrast, its 2020 predecessor was limited to employers with 500 or more U.S. employees.

The new law covers all employees for employers who meet the 26+ employee quota. Unlike its 2020 predecessor, the new law allows employees to use leave to care for family members (defined to include a child, grandchild, grandparent, parent, sibling, or spouse).

Amount of Leave

The amount of leave allotted under the 2021 law is the same as under its 2020 predecessor. During the law's effective period (January 1, 2021 through September 30, 2021), full-time employees receive 80 hours of leave. Generally speaking, a full-time employee is one who worked, or was scheduled to work, at least 40 hours per week in the two weeks preceding their leave.

For part-time employees with a normal work schedule, the amount of leave is equal to the total number of hours the employee typically works over two weeks. For part-time employees working a variable schedule, the amount of leave is calculated by determining the average number of hours the employee worked per day over the preceding six months and multiplying that number by 14. If a part-time employee has a variable schedule and has worked for the employer for more than 15 days, but less than six months, the same calculation is used, but by calculating the average number of hours that the employee worked per day over their entire employment and multiplying that by 14. If a part-time employee has worked for the employer for less than 15 days, the employee is entitled an amount of leave equal to the total amount of hours they have worked.

Qualifying Reasons for Leave

An employee unable to work or telework may use supplemental paid sick leave under the new law for the following reasons:

- The employee is subject to a federal, state, or local quarantine or isolation period related to COVID-19;
- The employee is 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 COVID-19 vaccine;
- The employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework;
- The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;
- The employee is caring for a family member who is subject to a quarantine or isolation order, or who has been advised to self-quarantine by a health care provider due to COVID-19 concerns; or,
- The employee is caring for a child whose school or place of care is closed or otherwise unavailable on the premises for reasons related to COVID-19.

Rate of Pay

Employers should take note that the new 2021 law calculates the applicable rate of pay differently than its 2020 predecessor. Under the new law, employers must pay nonexempt (typically, hourly) employees the higher of: (1) the employee's regular rate of pay, regardless of whether the employee works overtime in the workweek in which they use leave; or (2) a rate equal to the employee's total wages (excluding overtime premiums) divided by the total hours worked in the pay periods of the preceding 90 days of their employment. If the applicable state or local

minimum wage is greater than either of these calculations, the employer must pay the minimum wage.

For exempt (typically, salaried) workers, supplemental paid sick leave is calculated in the same way wages are calculated for other forms of paid leave, with a cap of \$511 per day or \$5,110 overall. Employees may use other available paid leave or paid time off to achieve full compensation during their leave.

Offsetting Previously Provided Leave

Employers who have already provided paid leave to employees for a qualifying reason under the new law since January 1, 2021 may be able to offset their obligations under the law. If an employee (1) took paid leave compensated at a level equal or greater to the amount of pay required under the new law, and (2) took paid leave for a covered reason under the new law, the employer may count those leave hours toward the total number of supplemental paid sick leave hours it must provide to the employee.

Employers also may retroactively increase the pay provided for leave that employees already took, but paid at a rate lower rate than what is required under the new law. Doing so qualifies the leave as an offset under the new law, provided that the leave was taken for a qualifying reason on or after January 1, 2021. If an employee who took leave for a qualifying reason on or after January 1, 2021 requests that the employer “true-up” (retroactively increase pay for the leave to meet the amount required under the new law), the employer must do so on or before the employee’s regular payday for the pay period following the pay period during which the employee made the request.

Interaction With Other Laws

It is important to emphasize that SB 95 is a supplemental benefit, meaning employers cannot count paid sick leave provided under California’s Healthy Workplaces, Healthy Families Act toward its obligations under SB 95.

Employers also may not require an employee to use any other paid or unpaid leave, paid time off, or vacation time before using COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave. But if an employee uses paid leave provided under a federal or local law for a covered reason under SB 95, the employer *may* count that leave toward its SB 95 obligations, provided the employee is compensated in an amount greater or equal to what is required under this law. Employers with fewer than 500 employees should consider whether they will voluntarily offer similar paid leave and claim federal tax credits that may be available to them under the American Rescue Plan Act of 2021.

Employers subject to the Cal/OSHA COVID-19 Emergency Temporary Standards or the Cal/OSHA Aerosol Transmissible Diseases Standard’s requirement to maintain an employee’s earnings when the employee cannot enter the workplace due to COVID-19 exposure may require the employee to first exhaust supplemental paid sick leave under SB 95 before providing additional leave required under the applicable Cal/OSHA standard.

Notice Requirements

Employers must display the state labor department’s forthcoming poster conspicuously in the workplace or, for remote workers, electronically (such as by email). The poster will be made available by March 26, 2021 on the state labor department’s website.

Information concerning the new law (including available leave balance and amounts of leave taken) must also be contained on paystubs or other written notices employees receive on their regular payday. New to the 2021 supplemental paid sick leave law is a requirement that supplemental paid sick leave and pre-COVID-19 statutory paid sick leave be displayed separately. For part-time employees working an irregular schedule, employers must provide an initial calculation of supplemental paid sick leave available with a “(variable)” indication next to the calculation, and update the calculation if or when the employee requests to use leave. Retroactive payments for leave taken between January 1, 2021 and March 29, 2021 (the law’s effective date) must be reflected on the paystub for the pay period during which payment is made.

Special Cases

The new law contains special provisions that apply to specified in-home support service providers and personal waiver care service providers, as well as unique provisions for firefighters. Employers of these workers should consult the law or speak with a California employment attorney for guidance on their obligations.

The new law is codified at Labor Code Section 248.2.

For more information, please consult with a [Troutman Pepper Labor and Employment Law attorney](#).

RELATED INDUSTRIES + PRACTICES

- [Labor + Employment](#)