

California's Expanded COVID-19 Leave Law – How Can Employers Comply?

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Last week, California Governor Gavin Newsom signed into law a bill that will substantially expand the availability of compensable time off for California employees who must miss work due to COVID-19.

California Assembly Bill 1867 (the “Act”), which took effect Saturday, September 19, requires California private employers with **500 or more employees in the United States** to provide paid, supplemental sick leave, specifically for absences related to COVID-19. The Act is not entirely novel — other initiatives have been promulgated in recent months to help employees cope with absences necessitated by the pandemic. In April, the Governor signed an executive order providing food sector workers with supplemental sick leave. California employees in other industries have benefited from supplemental sick leave laws passed by local governments in recent months as well. But the Act is the first state-wide measure to bring comparable benefits to employees across a broad range of industries. The implications for California employers are significant — the Act poses immediate compliance challenges for covered entities.

Perhaps the most difficult compliance hurdles involve payroll administration. Employers subject to the Act *must* add a line item to employee wage statements to indicate available California COVID-19 related supplement sick leave right away. Informing employees of their available balance in a separate writing each pay period will also suffice.

The Act's *separate* posting requirement also presents logistical challenges. Employers must immediately begin displaying a poster explaining the supplemental paid sick leave, unless the employees do not actually spend time in the workplace, in which case the notice must be distributed through other means such as email. The Labor Commissioner has published a model poster, available [here](#).

How long will the Act remain in place?

Although its provisions are set to expire as early as December 31, 2020, there is a strong chance they will remain in effect thereafter. The Act will be automatically extended to mirror any extension of the related federal law (the Families First Coronavirus Response Act) beyond December 31, 2020.

How much COVID-19 related supplemental sick leave are employers required to provide?

The minimum number of supplemental sick leave hours to which an employee is entitled varies based on an employee's tenure and hours worked.

Full-Time Employees

An **80-hour** minimum applies to employees who are considered "full-time" employees (*i.e.*, are categorized as full-time employees by the employer), as well as employees who are scheduled to work full-time hours (at least 40 hours per week) in the two weeks prior to the date the employee takes COVID-19 related supplemental leave.

Other Employees

- **Employees with normal weekly schedules:** The total number of hours the employee is ordinarily scheduled to work in a two-week period
- **Employees who work a variable number of hours and have been employed for over six months:** 14 times the average number of hours worked per day in the six-month period preceding the COVID-19 supplemental leave
- **Employees who work a variable number of hours and have been employed for more than two weeks but less than six months:** 14 times the average number of hours worked per day throughout their employment
- **Employees who work a variable number of hours and have worked for two weeks or less:** the total number of hours worked

Under what circumstances can employees use the supplemental sick leave provided by the Act?

Under the Act, COVID-19 related supplemental sick leave is available under three circumstances:

- A local, state, or federal isolation order or quarantine related to COVID-19 applies to the employee;
- A healthcare provider advises the employee to isolate or quarantine due to COVID-19 related concerns; or
- The employer prohibits the employee from working due to COVID-19 related concerns.

Importantly, an employer may **not** require employees to exhaust other paid leave before using COVID-19 related supplemental leave.

What is the compensable rate for supplemental sick leave under the Act?

Employers may cap supplemental sick leave at \$511 per day and \$5,110 in total. Otherwise, the compensable rate is either an employee's regular rate of pay for the preceding pay period or the applicable minimum wage, whichever is higher. In some cases, employers may count previously provided COVID-related leave toward this policy.

What should employers do now?

Employers with 500 or more employees in the United States and any number of employees in California should consider seeking outside counsel to assess and implement efficient compliance solutions.

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