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Paid COVID-19 Supplemental Sick Leave Returns to California, Again

By Megan S. Shaked

California Governor Newsom has signed legislation extending a new allotment of up to 80 hours of COVID-19 supplemental paid sick leave to California workers through new Labor Code Sections 248.6 and 248.7. The leave is retroactive to January 1, 2022, and continues through September 30, 2022. Small businesses that employ 25 or fewer workers are not covered by the legislation.

Use of Sick Leave for Reasons Related to COVID-19

The legislation provides for up to 40 hours of COVID-19 supplemental paid sick leave for employees who are unable to work or telework for certain reasons related to COVID-19, including:

- Employee is subject to quarantine or isolation period related to COVID-19 as defined by an order or guidance of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer with jurisdiction over the workplace;
- Employee has been advised by a health care provider to isolate or quarantine due to COVID-19;
- Employee is attending a COVID-19 vaccine or vaccine booster appointment for themselves or a family member;
- Employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster;
    - (for each vaccination or booster, an employer may limit the total COVID-19 supplemental sick leave to 3 days or 24 hours unless the employee provides verification from a health care provider that the employee or family member is continuing to experience symptoms. This includes the time to get the vaccine or booster.)
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Employee is caring for a family member who is subject to an order or guidance to quarantine or isolate or has been advised to isolate or quarantine by their health care provider;
- Employee is caring for a child whose school or place of care is closed or otherwise unavailable for reason related to COVID-19 on the premises

The full 40 hours is available to a covered employee who works full time, or was scheduled to work an average

of at least 40 hours per week in the two weeks prior to the leave. The calculation differs for those who work a different schedule or for firefighters.

Use of Sick Leave when Positive for COVID-19

In addition, a covered employee can take up to 40 additional hours if the covered employee, or family member for whom the employee is providing care, tests positive for COVID-19. If an employee tests positive, an employer may require that employee submit to another test on or after the fifth day after the first positive test and provide documentation of the results. The employer must make the test available at no cost to the employee. An employer is not obligated to provide additional COVID-19 supplemental paid sick leave if an employee refuses to provide documentation of a test result.

Additional Requirements

The up to 80 hours of COVID-19 supplemental sick leave is in addition to any paid sick leave available under the Healthy Workplaces, Healthy Families Act of 2014 (California paid sick leave under Labor Code section 246) and is in addition to any prior COVID-19 supplemental paid sick leave the employee was entitled to. An employer may not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time before the covered employee may use the COVID-19 supplemental paid sick leave or in lieu of the COVID-19 supplemental paid sick leave. In addition, the employer may not require an employee to exhaust their COVID-19 supplemental paid sick leave before satisfying any requirement to provide paid leave required by the Cal/OSHA COVID-19 Emergency Temporary Standards. The payments are capped at $511 per day and $5,110 in total. The legislation provides additional details on the proper calculation of pay.

The legislation calls for the Labor Commissioner to make a model notice available so employers can provide notice of the newly available paid sick leave. In addition, COVID-19 supplemental paid sick leave must be identified separately from paid sick days and employers must provide an employee with written notice of the amount of COVID-19 supplemental paid sick leave that the employee has used either on an itemized wage statement or in a separate writing on the designated pay date.

If a covered employee makes an oral or written request for retroactive payment, required payments are due on or before the payday for the next full pay period after such request.

For additional background on the previous iterations of California COVID-19 Supplemental Paid Sick Leave, review our previous blog article here.

Takeaways

Now is the time for employers to modify their sick leave policies and procedures for compliance with this 2022 COVID-19 Supplemental Paid Sick Leave. Human Resources and operations teams should also be trained accordingly. Employers will also need to display the required poster when it becomes available from the Labor Commissioner (or disseminate the notice for those employees who do not frequent a workplace).

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