

MARCH 29, 2021 | LABOR & EMPLOYMENT INTERSECTIONS

RETURN OF CALIFORNIA'S COVID-19 SUPPLEMENTAL PAID SICK LEAVE

By [Andrew J. Sommer](#) and [Ashley D. Mitchell](#)

California has just reinstated the COVID-19 specific paid sick leave law that expired at the end of 2020 but this time with a twist. As we discussed in a [blog post](#) last year, California enacted the 2020 COVID-19 Supplemental Paid Sick Leave law to extend benefits to employees not covered by the paid benefits provision of the Families First Coronavirus Response Act (FFCRA). While the FFCRA's paid sick leave provision lapsed on December 31, 2020 along with California's 2020 COVID-19 Supplemental Paid Sick Leave law, California has just passed, effective March 29, 2021, the 2021 COVID-19 Supplemental Paid Sick Leave law extending benefits again with significantly expanded eligibility.



Eligibility Requirements

The 2021 COVID-19 Supplemental Paid Sick Leave law requires all California employers with more than 25 employees to provide COVID-19 related paid sick leave (up to 80 hours) to employees who cannot work or telework due to the reasons discussed below. This paid leave is in addition to any payment that was provided under the previous COVID-19 Supplemental Paid Sick Leave law expiring on December 31, 2020. The 2021 COVID-19 Supplemental Paid Sick Leave law does not apply to independent contractors, unlike the previous law, and expands upon the eligibility criteria. The California Department of Industrial Relations (DIR) has issued [2021 COVID-19 Supplemental Paid Sick Leave FAQs](#) offering detailed guidance on this new law.

Covered employees are now eligible under the 2021 COVID-19 Supplemental Paid Sick Leave law if they are unable to work or telework due to any of the following reasons:

- The covered employee is subject to a quarantine or isolation period related to COVID-19, as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace
- The covered employee has been advised by a healthcare provider to quarantine due to COVID-19, or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- The covered employee is caring for a family member (as defined) who is either subject to a quarantine or isolation period or has been advised by a healthcare provider to quarantine due to COVID-19

- The covered employee is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises
- The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms

Note that for the covered employee to be considered “subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines,” the order or guidelines “must be specific to the covered employee’s circumstances.” FAQ 6. A general stay-at-home order does not qualify as a quarantine or isolation order. Further, family members for whom a covered employee may be eligible for benefits based on their care include a child, parent, spouse, registered domestic partner, grandparent, grandchild and sibling.

Availability and Use of COVID-19 Related Paid Sick Leave

The 2021 COVID-19 Supplemental Paid Sick Leave law covers the period January 1, 2021 to September 30, 2021, despite the law taking effect on March 29, 2021. Covered employees who took qualifying leave between January 1 and March 28, 2021, may request payment for that leave beginning on March 29 if it was not already paid by the employer in the amount required under this law. But if an employer voluntarily paid another supplemental benefit for that COVID-19 related sick leave, the employer may receive a credit towards the requirements of the 2021 COVID-19 Supplemental Paid Sick Leave law. An employer does not qualify for this credit if it required the covered employee to use any other paid sick leave or paid time off available to the employee under a policy that is *not specific to COVID-19*.

To receive a retroactive benefits payment, the employee must make an oral or written request for qualifying leave. Once an employee makes that request, the employer has until the next payday for the next full pay period to pay the retroactive benefit. Likewise, if a covered employee is taking this COVID-19 specific leave when the law expires on September 30, 2021, the employee may finish taking the amount of available supplemental paid sick leave.

The 2021 COVID-19 Supplement Sick Leave law provides 80 hours of COVID-19 specific paid sick leave for full-time employees. Part-time employees with set schedules are eligible for the number of hours they normally are scheduled to work for the employer over a two-week period. The DIR’s FAQ 14 addresses how to calculate COVID-19 specific paid sick leave for part-time employees with variable schedules. This paid sick leave is capped at \$511 per day and \$5,110 in the aggregate for a covered employee.

The 2021 COVID-19 Supplement Sick Leave law sets the floor with minimum requirements. An employer may count the COVID-19 related supplemental paid sick leave provided based on a local paid sick leave ordinance towards California’s COVID-19 Supplemental Paid Sick Leave. See FAQ 18. However, the California law does not override more generous provisions under local ordinances. For example, as the DIR expounded, “if an employer must provide COVID-19-related supplemental paid sick leave pursuant to a local law (and intends for that sick leave to count toward the requirements of California law), the employer must provide leave at a rate of pay that would ensure compliance with the local law and California law, which would be the higher of the rates required.” FAQ 19.

It is important to note that, like the prior law, the 2021 COVID-19 Supplemental Sick Leave law provides for paid

leave in addition to employer-provided paid sick leave required under the Healthy Workplaces, Healthy Families Act. Specific to any obligation for exclusion pay for an employee with potential workplace exposure to COVID-19 under the Cal/OSHA COVID-19 Emergency Temporary Standard, an employer may require that an employee first exhaust COVID-19 specific paid sick leave before providing exclusion pay.

Because the COVID-19 Supplemental Paid Sick Leave is in addition to regular paid sick leave, an employer's itemized wage statement must identify how many hours are available for 2021 COVID-specific sick leave, separate from the regular paid sick leave. FAQ 20.

In light of the COVID-19 specific paid leave requirements, California employers should promptly implement the following measures:

1. Display the required [poster](#) in a conspicuous place that contains information about 2021 COVID-19 Supplemental Paid Sick Leave. (If employees do not frequent a workplace, the employer may satisfy the notice requirement by disseminating notice through electronic means)
2. Modify leave policies and procedures to provide for COVID-19 specific paid leave to qualifying employees and train the HR and operations teams accordingly.

The 2021 COVID-19 Supplemental Paid Sick Leave law provides, as an enforcement remedy, that employees may file claims against their employer with the state Labor Commissioner's Office for failure to provide the required COVID-19 related paid leave, as well as retaliation for seeking paid leave or otherwise exercising their rights under this law. Accordingly, the policies and procedures that are implemented to timely address circumstances qualifying for such paid sick leave will help minimize any litigation threat.

Conn Maciel Carey LLP

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