



March 22, 2021

Governor Signs New 80-Hour COVID-19 Supplemental Paid Sick Leave Law

Late Friday, despite our opposition and the opposition of over 100 different organizations representing California businesses, Governor Newsom signed Senate Bill (SB) 95. The new law requires California employers with more than 25 employees to provide their employees with up to 80 hours of COVID-19 supplemental paid sick leave (SPSL) and takes effect on March 29, 2021. The leave is retroactive to January 1, 2021 and the statute expires on September 30, 2021.

We want to thank everyone who took the time to alert the Governor of their opposition to the bill at our request.

We have developed the following SB 95 FAQs to offer some guidance. Please remember that these FAQs are intended to provide general information about the new law and should not be relied upon as legal advice.

FAQs:

What employers are covered?

The new law applies to employers in the state of California with 25 or more employees.

Which employees are eligible?

Employees who are not able to work or telework for any of the reasons detailed below, qualify for the paid leave. There is no length of service requirement for the use of the COVID-19 SPSL under SB 95.

When can employees take leave?

Employees are entitled to leave for the following reasons:

- *The employee is subject to a quarantine or isolation period related to COVID-19;*
- *The employee has been 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 vaccine for protection against COVID-19;*
- *The employee is experiencing symptoms related to a COVID-19 vaccine that prevents the employee from being able to work or telework;*
- *The employee is experiencing symptoms related to COVID-19 and seeking medical diagnosis;*
- *The employee is caring for a family member who is subject to a quarantine or isolation order or has been advised to self-quarantine;*
- *The employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.*

How much leave are employees entitled to?

Generally, full time employees are entitled to 80 hours of COVID-19 SPSL, while part-time employees are entitled to an amount of COVID-19 SPSL correlating with the number of hours the employee regularly works over 2 weeks.

Is there a monetary cap on the COVID-19 SPSL?

The leave must be paid at the employee's regular rate of pay and is capped at \$511 per day and \$5,110 in aggregate.

Is the new COVID-19 SPSL in addition to the any COVID-19 related leave provided for in 2020?

Yes, this new bucket of 80 hours of leave is in addition to any leave an employee took in 2020 under the federal Families First Coronavirus Response Act or AB 1867.

How is the retroactive provision of the COVID-19 SPSL applied?

Employers must provide retroactive payment for qualifying leave taken since January 1, 2021, once the employee makes an oral or written request for such payment. Employers must make this payment on or before the payday for the next full pay period after the employee makes the oral or written request. The employee's wage statement must separately list the payment and reflect the hours available, rate of pay, and corresponding COVID-19 SPSL wages.

Can employers credit any COVID-19 related paid leave provided since January 1, 2021?

Employers who provided supplemental paid sick leave on or after January 1, 2021, under any local COVID-19 paid leave ordinance or a COVID-19 specific employer policy, may be able to count such paid leave towards the requirements of the new law. Excluding regular state required paid sick leave, SB 95 authorizes an employer to credit towards COVID-19 SPSL the hours of other paid leave the employer provided to employees on or after January 1, 2021, for absences taken for the same COVID-19–related reasons as those outlined the bill. Employers may not credit paid leave they provided employees for COVID-19–related reasons in 2020.

Is there a prohibition on forcing employees to use other leave first?

An employer may not force covered employees to use any other form of paid or unpaid leave or time off, including company-provided sick leave, vacation, or paid time off (PTO), before using COVID-19 SPSL. Instead, SB 95 authorizes employees to choose the number of COVID-19 SPSL hours to use, and when, up to the number of COVID-19 SPSL hours for which the employees are eligible.

Use of COVID-19 SPSL before pay required under the Cal/OSHA emergency temporary standards?

Although generally the employee may select when he or she uses COVID-19 SPSL, the employer can require that an employee exhaust COVID-19 SPSL before the employer pays exclusion pay under the [California Division of Occupational Safety and Health \(Cal/OSHA\) COVID-19 Emergency Temporary Standards \(ETS\)](#). Currently, employers must pay exclusion pay if they exclude an employee who tests positive during the infectious period or an employee has close contact with a positive individual and either situation is work-related.

What are the wage statement requirements?

An employer must list the amount of an employee's available COVID-19 SPSL on the employee's wage statement as a distinct line item. The employer must list available COVID-19 SPSL separately from any other available paid sick leave or paid time off. The wage statement requirement becomes effective the first full pay period after the statute's effective date of March 29, 2021.

Is there a notice or posting requirement?

Yes, employers must post a notice of the COVID-19 SPSL requirements in a conspicuous place in the workplace. If an employer's covered employees do not frequent a workplace, the employer may satisfy

the notice requirement by disseminating notice through electronic means such as email. SB 95 requires the Labor Commissioner's office to release a model notice within 7 days of the bill passing into law.