

# California Mandates COVID-19 Supplemental Paid Sick Leave for Food Sector Workers

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On April 16, California Governor Newsom signed Executive Order N-51-20 into law. The Order requires “Hiring Entities” with at least 500 employees nationwide to provide their “Food Sector Workers” with two weeks of COVID-19 Supplemental Paid Sick Leave when those workers are absent from work for certain reasons related to the COVID-19 pandemic. The Order became effective immediately and remains in effect until the expiration of all statewide stay-at-home orders.

The Order is intended to partially fill the gap left by the federal Families First Coronavirus Response Act, which generally requires employers with fewer than 500 employees to provide certain employees with paid sick leave and paid family and medical leave when they are unable to work or telework for reasons related to COVID-19. The Order uses the terms “Hiring Entity” (instead of “employer”) and “Food Sector Worker” (instead of “employee”), which indicates an obligation to furnish COVID-19 Supplemental Paid Sick Leave to independent contractors and other non-traditional workers, in addition to traditional employees.

## ■ Definitions

A “Food Sector Worker” is defined as a person who meets all three of the following criteria:

1. A person who either:
  - works in one of the following food supply chain industries or occupations:
    - Agriculture occupations (as defined by California Industrial Welfare Commission’s Wage Order 14-2001 section 2(D), [linked below](#)); or
    - Industries preparing agricultural products for market, on the farm (as defined by California Industrial Welfare Commission’s Wage Order 13-2001 section 2(H), [linked below](#)); or
    - Industries handling products after harvest (as defined by California Industrial Welfare Commission’s Wage Order 8-2001 section 2(H), [linked below](#)); or
    - Canning, freezing, and preserving industry (as defined by California Industrial Welfare Commission’s Wage Order 3-2001 section 2(B), [linked below](#)); or
  - works for a Hiring Entity that operates a food facility (as defined by California Health and Safety Code section 113789(a)-(b), [linked below](#)); or



- delivers food from a food facility (as defined under California Health and Safety Code section 113789(a)-(b)) for or through a Hiring Entity;
2. The person is exempt (as an “essential critical infrastructure worker”) from California’s stay-at-home order in Executive Order N-33-20 (linked below) or any other statewide stay-at-home order; and
  3. The person leaves home or other place of residence to perform work for or through the Hiring Entity.

A “Hiring Entity” is a private entity, including any delivery network company or transportation network company, that has 500 or more employees in the United States. The Hiring Entity must use the rules under the federal Families First Coronavirus Response Act to determine the number of its employees.

## ■ Paid Sick Leave

### Amount of Leave

The amount of COVID-19 Supplemental Paid Sick Leave payable to a Food Sector Worker is calculated as follows:

Food Sector Worker	Entitlement to COVID-19 Supplemental Paid Sick Leave
Food Sector Worker <ul style="list-style-type: none"> <li>• who is considered by the Hiring Entity to work “full-time”; or</li> <li>• who worked (or was scheduled to work) an average of at least 40 hours per week in the two weeks preceding the date that the person took leave</li> </ul>	80 hours
Food Sector Worker who does not satisfy the above criteria	If the Food Service Worker has a normal weekly schedule: <ul style="list-style-type: none"> <li>• The total number of hours that the person is normally scheduled to work over two weeks for or through the Hiring Entity</li> </ul> If the Food Service Worker works a variable number of hours: <ul style="list-style-type: none"> <li>• 14 times the average number of hours that the person worked each day for or through the Hiring Entity in the six months preceding the date that the person took leave (or the entire period worked for the Hiring Entity, if less than six months)</li> </ul>

If a Food Sector Worker is taking COVID-19 Supplemental Paid Sick Leave at the time all statewide stay-at-home orders expire, the person must be allowed to continue and complete the full amount of leave.

### Reasons for Taking Leave

To receive COVID-19 Supplemental Paid Sick Leave, a Food Sector Worker must make an oral or written request to the Hiring Entity for the leave because s/he is unable to work for one of the following reasons:

- The Food Sector Worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The Food Sector Worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- The Food Sector Worker is prohibited from working by the Hiring Entity due to health concerns related to the potential transmission of COVID-19.

### Payment of Leave

COVID-19 Supplemental Paid Sick Leave is paid at the highest of the following rates of pay:

- The Food Sector Worker’s regular pay rate for the last pay period;
- The California minimum wage; or
- The local minimum wage that applies to the Food Service Worker.

The dollar amount payable to a Food Sector Worker as COVID-19 Supplemental Paid Sick Leave is capped at \$511 per day and \$5,110 in the aggregate.



A Hiring Entity is not required to provide COVID-19 Supplemental Paid Sick Leave to a Food Sector Worker if, as of the effective date of the Executive Order (i.e. April 17, 2020), it provides the Food Sector Worker with a supplemental benefit (such as paid leave) that is payable for the reasons listed above, and the benefit amount is equal to or greater than the COVID-19 Supplemental Paid Sick Leave that the Food Sector Worker would otherwise be entitled to receive.

The total number of hours of COVID-19 Supplemental Paid Sick Leave that a Food Sector Worker is entitled to receive is in addition to any California Paid Sick Leave (linked below) available to the person. In addition, a Hiring Entity may not require a Food Sector Worker to use any other paid or unpaid leave, paid time-off, or vacation time provided by the Hiring Entity before the Food Sector Worker uses – or in lieu of – COVID-19 Supplemental Paid Sick Leave.

## ■ Notice and Posting

The California Labor Commissioner has published a model notice (linked below) that Hiring Entities must post in a conspicuous location in the workplace. If a Hiring Entity's Food Sector Workers do not frequent a workplace, the notice requirement can be satisfied by delivery through electronic means, such as e-mail. The notice can be found by visiting <https://www.dir.ca.gov/dlse/COVID-19-Food-Sector-Workers-poster.pdf>.