



California Expands COVID-19 Supplemental Paid Sick Leave

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On September 9, 2020, California Governor Newsom signed into law Assembly Bill No. 1867 (AB 1867). The bill addresses supplemental paid sick leave related to COVID-19 by codifying the existing paid sick leave available to food sector workers and creating a new type of paid sick leave for workers not already eligible for paid sick leave as a food sector worker under California law or under the federal Families First Coronavirus Response Act (FFCRA).

■ COVID-19 Food Sector Supplemental Paid Sick Leave

Effective April 16, 2020, Governor Newsom's Executive Order N-51-20 required "Hiring Entities" with at least 500 employees nationwide to provide their "Food Sector Workers" with up to two weeks of COVID-19 Supplemental Paid Sick Leave when those workers were absent from work for certain reasons related to the COVID-19 pandemic.

AB 1867 formally incorporates (or "codifies") Executive Order N-51-20 into California's legal codes by adding a new section 248 to the California Labor Code. The codified law imposes substantially the same obligations as the Executive Order, and is effective through December 31, 2020, or the expiration of the FFCRA, whichever is later.

■ COVID-19 Supplemental Paid Sick Leave

AB 1867 also adds a new section 248.1 to the California Labor Code, which requires every "Hiring Entity" to extend COVID-19 Supplemental Paid Sick Leave to "Covered Workers" who are not already eligible for paid sick leave related to the COVID-19 pandemic under the FFCRA or as a food sector worker under California law.

The requirements of the new law are effective September 19, 2020, through December 31, 2020, or the expiration of the FFCRA, whichever is later. However, if a Covered Worker is taking COVID-19 Supplemental Paid Sick Leave at the time the state law requirement to provide such leave expires, the person must be allowed to continue and complete the full amount of leave.

The California Labor Commissioner has published additional guidance on Supplemental Paid Sick Leave in the form of FAQs.



Hiring Entities and Covered Workers

A “Hiring Entity” is either:

- private entity that has 500 or more employee nationwide, or
- a public or private entity that employs health care providers or emergency responders, and that has elected to exclude such employees from emergency paid sick leave under FFCRA.

A “Covered Worker” is an employee who leaves his or her home to perform work for a Hiring Entity. Excluded from this definition are food sector workers who are eligible for COVID-19 Supplemental Paid Sick Leave under Executive Order N-51-20 and California Labor Code section 248.

Amount of Leave

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

Covered Worker	Entitlement to COVID-19 Supplemental Paid Sick Leave
Covered Worker who is an active firefighter and scheduled to work more than 80 hours for the Hiring Entity in the two weeks preceding the leave	The total number of hours the Covered Worker was scheduled to work for the Hiring Entity in the two weeks preceding the leave
Any other Covered Worker: <ul style="list-style-type: none"> • who is considered by the Hiring Entity to work “full-time”; or • who worked (or was scheduled to work) an average of at least 40 hours per week for the Hiring Entity in the two weeks preceding the date that the person took leave 	80 hours
Covered Worker who does not satisfy any of the above criteria	If the Covered Worker has a normal weekly schedule: <ul style="list-style-type: none"> • The total number of hours that the person is normally scheduled to work for the Hiring Entity over two weeks If the Covered Worker works a variable number of hours, and has worked for the Hiring Entity for: <ul style="list-style-type: none"> • more than 14 days: 14 times the average number of hours that the person worked each day for 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) • 14 days or fewer: the total number of hours the person has worked for the Hiring Entity



Reasons for Taking Leave

COVID-19 Supplemental Paid Sick Leave is payable by a Hiring Entity when a Covered Worker makes an oral or written request to the Hiring Entity and is unable to work for one of the following reasons:

- The Covered Worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The Covered Worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- The Covered 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 generally paid at the highest of the following rates of pay:

- The Covered Worker's regular pay rate for the last pay period;
- The California minimum wage; or
- The local minimum wage that applies to the Covered Worker.

However, for a Covered Worker who is an active firefighter scheduled to work more than 80 hours in the two weeks preceding the leave, the COVID-19 Supplemental Paid Sick Leave is paid at the regular rate of pay as if the worker had been scheduled to work those hours, pursuant to existing law or applicable collective bargaining agreement.

The dollar amount payable as COVID-19 Supplemental Paid Sick Leave to any Covered Worker (including an active firefighter) is capped at \$511 per day and \$5,110 in the aggregate.

The amount of COVID-19 Supplemental Paid Sick Leave payable to a Covered Worker may be reduced or offset as follows:

- If a Hiring Entity already provides the Covered Worker with a supplemental benefit (such as supplemental paid leave) that is payable for the reasons listed above, and provides compensation that is equal to or greater than the amount of compensation that the Covered Worker would otherwise be entitled to receive as COVID-19 Supplemental Paid Sick Leave, then the Hiring Entity receives credit for those hours toward COVID-19 Supplemental Paid Sick Leave.
- Additionally, if a Hiring Entity already provided supplemental paid leave between March 4, 2020 and September 19, 2020, for a reason listed above, but did not compensate the Covered Worker in an amount equal to or greater than the amount of compensation required for COVID-19 Supplemental Paid Sick Leave, the Hiring Entity may retroactively provide supplemental pay to the Covered Worker to satisfy its compensation obligations, and receive credit for those hours toward COVID-19 Supplemental Paid Sick Leave.

It is important to note that the total number of hours of COVID-19 Supplemental Paid Sick Leave that a Covered Worker is entitled to receive is not reduced or offset by any California Paid Sick Leave available to the person under California Labor Code section 246. Further, a Hiring Entity may not require a Covered Worker to use any other paid or unpaid leave, paid time-off, or vacation time provided by the Hiring Entity before the Covered 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. The FAQs on Supplemental Paid Sick Leave state that if a Hiring Entity's Covered Workers do not frequent a workplace, the notice requirement can be satisfied by delivery through electronic means, such as e-mail.

Employers must also give covered employees notice of the available amount of supplemental paid leave either in the wage statement or a separate writing provided on designated pay dates.