

Top 10 Questions about California's New COVID-19 Supplemental Paid Sick Leave Law with Retroactive Paid Time Off

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March 24, 2021

California Governor Gavin Newsom signed [Senate Bill \(SB\) 95](#) on March 19, 2021, which creates new Labor Code section 248.2 and mandates that public and private employers with 26 or more employees provide supplemental paid sick leave (SPSL) for COVID-related absences *in addition to* paid time off benefits employees receive by law or policy. The law goes into effect on March 29, 2021, applies retroactively to January 1, 2021, and is effective through September 30, 2021. To help employers understand the new law and its requirements, Meyers Nave attorneys [Gorev Ahuja](#) and [Arlene Yang](#) prepared this advisory guide answering the ten most common questions employers are asking about SB 95. Additional information is also available in this [FAQ](#) provided by the State of California Department of Industrial Relations.

1. Which employers are subject to SB 95?

The new Labor Code Section 248.2 applies to many more employers because it defines “covered employer” as any business “with more than 25 employees.” This includes public and private entities. The new law is a significant expansion of prior California mandates because AB 1867 only covered private employers of 500 or more employees, and certain health care providers and emergency responders.

2. When does SB 95 go into effect?

The law goes into effect on March 29, 2021, and is effective through September 30, 2021.

3. What happened to the prior mandates under AB 1867 and FFCRA?

Prior mandates to provide COVID-19 paid sick leave under AB 1867 and the federal Family First Coronavirus Response Act expired on December 31, 2020.

4. Is SB 95 retroactive?

The new leave requirements are retroactive to January 1, 2021. Starting on March 26, 2021, employees may request payment for the retroactive leave, orally or in writing. 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. Employees can use COVID-19 SPSL for any absence since January 1, 2021, that falls within a covered reason. For example, if an employee took unpaid leave in January 2021 to care for a quarantined family member, the employee can ask for, and the employer must pay, COVID-19 SPSL for those unpaid absences. Similarly, if an employee took paid vacation in February 2021 because the employee was experiencing COVID-19 symptoms and waiting for a medical diagnosis, the employee could ask for and the employer would have to pay COVID-19 SPSL for those days and replenish the employee's vacation bank.

5. For what reasons may employees take Supplemental Paid Sick Leave?

Covered employees may take COVID-19 SPSL if they are unable to work or telework due to any of the following reasons:

- a. The employee “is subject to a quarantine or isolation period related to COVID-19” as defined by an order or guidelines of the California Department of Public Health, the U.S. Centers for Disease Control and Prevention, “or a local health officer who has jurisdiction over the workplace.”
- b. A health care provider has advised the employee to self-quarantine because of COVID-19–related concerns.
- c. The employee “is attending an appointment to receive” a COVID-19 vaccine.
- d. The employee “is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.”
- e. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
- f. The employee is caring for a family member who is subject to (a) or (b). SB 95 defines family members to include the employee’s spouse, registered domestic partner, parent (including parents-in-law), child (regardless of age or dependency), grandparent, grandchild, and sibling.
- g. 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.”

6. What is the amount of leave employees receive and can use?

- a. Full-Time Employees: Employees are eligible to receive *80 hours* if the employer considers them to work full time or, on average, they worked or were scheduled to work at least 40 hours per week in the two weeks preceding the date they took leave.
- b. Part-Time Employees: Employees who work a variable number of hours may receive 14 times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took COVID-19 supplemental paid sick leave. If the covered employee has worked for the employer over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the covered employee has worked for the employer. Employees who worked 14 days or fewer receive leave hours equal to their total number of hours worked.
- c. Special Rules for Fire Fighters: Firefighters are entitled to more than 80 hours of COVID-19 supplemental paid sick leave if they were scheduled to work more than 80 hours in the two preceding weeks. However, they still cannot receive more than \$511 per day or \$5,110 in total.

7. How much are employees paid?

Employers must pay each hour of COVID-19 SPSL for nonexempt employees at the *higher* of:

- The employee’s “regular rate of pay for the workweek in which” COVID-19 SPSL was taken, regardless of whether the employee worked overtime in that workweek;
- The average hourly pay for the preceding 90 days (not including overtime pay);
- The California minimum wage; *or*
- The local minimum wage.

COVID-19 SPSL for *exempt covered* employees is calculated the same as for other forms of paid leave for exempt employees. COVID-19 SPSL wages may not exceed \$511 per day and \$5,110 total.

8. What if employers already provided paid sick leave for COVID-19 reasons?

If an employer paid an employee another benefit for leave taken on or after January 1, 2021 that is payable for the law’s covered reasons and compensates employees in an amount equal to or greater than the amount of pay the law requires, an employer may count those hours toward the number of hours of SPSL it must provide an employee under the new law. For example, if an employer already extended and the employee used 3 hours of leave taken under the Families First Coronavirus Response Act (FFCRA) on or after January 1, 2021, a full-time employee would be entitled to 77, not 80, hours of COVID-19 SPSL. Employers **may not** credit paid leave they provided employees for COVID-19–related reasons in 2020.

9. How does SB 95 interact with Cal/OSHA COVID-19 Emergency Temporary Standards?

Under the California Division of Occupational Safety and Health (Cal/OSHA) [COVID-19 Emergency Temporary Standards \(ETS\)](#), from November 30, 2020 to October 2, 2021, employers must provide paid, job-protected leave, known as “exclusion pay,” when employees are able and available to work, but are excluded from the workplace because they tested positive during the infectious period or had close contact with a positive individual and either situation is work-related. Although generally the employee selects when to use COVID-19 SPSL, the employer nevertheless can require that an employee exhaust COVID-19 SPSL before the employer pays exclusion pay.

10. What are the next steps for employers?

- Educate and train human resources and payroll staff about the new requirements. Training should include the California Division of Occupational Safety and Health (DOSH or Cal/OSHA) Emergency Temporary Standards exclusion pay, and how to handle requests for retroactive sick leave pay.
- Ensure your payroll provider separately designates COVID-19 SPSL on wage statements. Wage statements must list the payment, hours available, rate of pay, and COVID-19 SPSL wages.
- Employers must post notice about COVID-19 SPSL and distribute it electronically to employees who do not frequent a workplace. The Labor Commissioner’s model notice is located [here](#).