

HR COMPLIANCE BULLETIN

New California COVID-19 Leave Law Is Retroactive to Jan. 1

Under a [new law](#), California employers with more than 25 employees must provide up to 80 new hours of supplemental paid sick leave for specific COVID-19-related reasons. **The leave requirement takes effect March 29, 2021, but is retroactive to Jan. 1, 2021.**

Reasons for Leave

Employees may take leave if they cannot work or telework because of:

- Quarantine, isolation, or a healthcare provider's advice to quarantine due to COVID-19, or symptoms of COVID-19 while seeking a diagnosis;
- Caring for a family member to whom one of the above quarantine or isolation conditions applies, or caring for a child whose school or place of care is closed or unavailable due to COVID-19 **on the premises**; or
- A vaccine appointment or vaccine-related symptoms.

Retroactivity of Leave

Employees who took qualifying leave between Jan. 1 and March 28, 2021, may request payment from their employers for that leave under the new law. Leave pay is subject to daily and total maximums. The leave must be provided in addition to other paid or unpaid leave, but employers may be credited for leave taken since Jan. 1 that meets supplemental paid leave requirements.

Notice Requirements

Employers must post a [notice](#) about the leave entitlement.

Action Steps

Employers should ensure their policies comply with the new leave, notice and recordkeeping requirements of the law. The California Department of Industrial Relations (DIA) has published [FAQs](#) about the new law.

Highlights

Law Provides Fresh Leave

New mandated leave amounts are in addition to leave required under expired 2020 COVID leave laws.

Credit for Qualifying Leave

Employers who provide or provided leave meeting the law's requirements are credited for that leave.

Local Leave Requirements Still Apply

The new state law does not preempt local employee leave ordinances that might require more generous leave policies.

Important Dates

Jan. 1, 2021

Employees may demand pay for leave that began on or after this date.

March 29, 2021

Supplemental Paid Leave Law takes effect.

Sept. 30, 2021

Supplemental paid leave expires.



JP Griffin Group



Background

On Dec. 31, 2020, federal and California state laws requiring COVID-19-related paid employee leave expired. The federal Families First Coronavirus Response Act (FFCRA) had required employers with fewer than 500 employees to provide paid sick leave and paid expanded family leave. California state laws passed in 2020 additionally required paid sick leave for employees of organizations with 500 or more employees and for health care workers and emergency responders not covered by the FFCRA. Like the FFCRA, these state laws expired Dec. 31, 2020.

The new Supplemental Paid Sick Leave Law was passed March 19, 2021, with an effective date of March 29, 2021. It was made **retroactive** to Jan. 1, 2021, to cover COVID-19-related leave taken after the 2020 COVID leave laws expired. The leave benefits under the new law expire Sept. 30, 2021.

Covered Employers

All public and private employers with more than 25 employees are covered, including those with collective bargaining agreements. Independent contractors are not covered by the law.

Covered Employees

All employees who work for an employer with more than 25 employees.

Reasons for Taking Leave

Employees may take the new supplemental paid sick leave to care for themselves or a family member during COVID-19-related illness, quarantine or isolation, and for COVID-19 vaccine-related reasons. Specifically, employees may take the leave if they are unable to work or telework because they:

- Are subject to a quarantine or isolation period related to COVID-19, or have been advised by a healthcare provider to quarantine due to COVID-19, or are experiencing symptoms of COVID-19 and are seeking a medical diagnosis.
- Are caring for a family member who is either subject to a quarantine or isolation period related to COVID-19 or has been advised by a healthcare provider to quarantine due to COVID-19, or are caring for a child whose school or place of care is closed or unavailable due to COVID-19 **on the premises**.
- Are attending a vaccine appointment or are experiencing vaccine-related symptoms.

A quarantine or isolation period related to COVID-19 is the period defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace. The term does not include general stay-at-home orders, but does include orders that are specific to the employee's circumstances.

Amount of Leave

The new COVID-19 supplemental paid sick leave must be provided **in addition to** any other paid or unpaid leave, paid time off or vacation time provided by the employer. Furthermore, employers are prohibited from requiring employees to use any other leave before using the new leave. However, employers may require an employee excluded from the workplace under the Cal-OSHA COVID-19 Emergency Temporary Standards or the Cal-OSHA Aerosol Transmissible Diseases Standard to first exhaust their COVID-19 supplemental paid sick leave before having to provide exclusion pay.

Full-time Employees

Full-time employees (those who worked or were scheduled to work 40 hours per week in the two weeks before leave is taken) are entitled to 80 hours of supplemental paid sick leave.

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Part-time Employees

Regular weekly schedules: Part-time employees with regular weekly schedules may take a leave amount equal to two weeks of working hours.

Variable schedules: Part-time employees with variable schedules who have worked for their employer for more than 14 days may take 14 times the average number of hours they worked each day in the six months preceding the leave. If the employee has worked for the employer for fewer than six months, this calculation would be done over the entire period that the covered employee has worked for the employer. If the variable schedule calculation results in an average work schedule of at least 40 hours per week, the variable-scheduled covered employee would be considered full time and entitled to 80 hours of leave.

For newly hired, variable-hour employees who have worked for their employer for less than 15 days, the leave entitlement is equal to the hours they have worked in the last two weeks.

Special rules apply for calculating leave owed to firefighters.

The DIA's FAQs provide further information about calculating leave.

Compensation

Maximum Amounts

Supplemental paid sick leave compensation is capped at \$511 per day and \$5,110 total, per employee. Employees may use other paid leave available to them to make up the difference between this pay rate and their normal pay.

Non-exempt employees

Non-exempt employees on leave must be paid the highest of the following:

- The employee's regular rate of pay for the workweek in which the leave is taken;
- A rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment;
- The state minimum wage; or
- The local minimum wage.

Exempt Employees

Supplemental paid sick leave compensation for exempt employees must be the same as other forms of paid leave.

Other Leaves

Employers may take **credit** against the new leave requirement for paid leave provided since January 1, 2021, or going forward, whether the payment for the leave is retroactive or occurs at the time of the leave. However, the credited leave must be taken for one of the permitted purposes of the new COVID-19 Supplemental Paid Leave Law and must be compensated at the rate required by the new law. In addition, the employer may not require the employee to use vacation time or any other paid leave or paid time off under a policy not specific to COVID-19.

If the paid leave for which credit is sought was not compensated at the required rate, the employer may make a retroactive payment to make up the difference. If an employee requests the payment, the employer must make it by the next payday.

Employers may also count supplemental paid sick leave provided under a **local ordinance** toward their new state leave obligation. The leave must be for a reason permitted under the new state COVID-19 Supplemental Paid Sick Leave Law



and must provide at least at the same rate of pay as this law requires. Employers must provide more generous leave if required to do so by local law.

State Disability Insurance (SDI) may not be used to meet the employer's new COVID-19 paid sick leave requirements.

Requesting Leave

Current Leave

Employers must provide supplemental paid sick leave immediately when it is requested by an employee, either orally or in writing. The leave may not be denied due to a lack of medical certification of the employee's need for leave. However, the DIA's FAQs state that it may be reasonable in some circumstances to ask for documentation before paying for leave when the employer has information indicating the leave is not for a valid purpose.

Retroactive Leave

Starting March 29, 2021, if an employee makes an oral or written request to be paid (or for additional payment up to the law's required rate of compensation) for leave taken Jan. 1 - March 28, 2021, and the leave taken qualifies under the requirements of the 2021 Supplemental Paid Sick Leave Law, the employer must make the payment by the next payday.

Notice and Recordkeeping

Employers must display this [poster](#) in a conspicuous place in the workplace. If employees do not frequent a workplace, the employer may disseminate the notice electronically.

The 2021 Supplemental Paid Sick Leave Law requires that the new paid leave be indicated separately from regular paid sick leave on itemized paystubs, or in a separate writing when wages are paid. The records must be kept for three years.

Enforcement

Employees are protected from retaliation for using or attempting to exercise their right to supplemental paid sick leave under California labor law. Failure to provide leave as required is a violation of state labor law.