

HR COMPLIANCE BULLETIN

States Update Employee Leave Requirements for Coronavirus

In response to the coronavirus (COVID-19) pandemic, states have passed new laws and issued new regulations and guidance about employee leave taken for COVID-19 reasons. These provisions are in addition to the federal Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion requirements passed on March 18 as part of the Families First Coronavirus Response Act (FFCRA).

In general, employee leave permitted under new state COVID-19 rules and guidance varies with respect to factors like the employers and employees covered by the leave, the length and purpose of the leave, whether the leave is compensated and at what rate, and whether the leave is provided under a new law or rule, or covered under an existing provision.

This Compliance Bulletin briefly describes new state employee leave provisions and guidance enacted or issued in response to the COVID-19 pandemic, along with links to government resources providing further information. Information about similar measures in select major cities is also included. The document will be updated with additional new employee leave rules in this rapidly changing compliance area.

Action Steps

Employers should monitor the websites of their state departments of labor for new laws, rules and guidance about COVID-19-related employee leave.

Highlights

States are increasingly enacting laws and issuing new rules and guidance on employee leave taken as a result of COVID-19.

State actions on employee leave come in addition to paid employee leave required by the Families First Coronavirus Act passed by Congress.

Key features of new laws and regulations include the length of leave, compensation for leave, and eligibility requirements for leave.

Recommendations

Employers should stay alert to the following actions on the state level:

- New employee leave laws and regulations
- Changes to existing laws and rules on employee leave
- Guidance on the application of existing rules and laws to COVID-19 circumstances



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California

Effective Sept. 19, 2020, [AB 1867](#) closes the gaps in paid sick days in the FFCRA and in Governor Newsom's executive order (now a law) covering food sector workers. The state's Department of Industrial Relations has issued [FAQs](#) on the law.

Non-Food Sector Employees

AB 1867 requires COVID-19-related **supplemental paid sick leave** for workers who work outside their residence and whose employer:

- Has 500 or more employees in the United States; or
- Excluded them from emergency paid sick leave under the FFCRA as health care providers or emergency responders.

Supplemental paid sick leave is available for covered workers who are:

- Subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- Advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- Prohibited from working by the worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

The new law allows full-time workers to receive up to **80 hours** of paid leave, in addition to any other accrued paid sick leave. Part-time workers receive a leave amount equal to the total number of hours they are normally scheduled to work over two weeks. Variable hour employees receive 14 times the average number of hours they worked each day in the six months preceding leave. Firefighters scheduled to work more than 80 hours in the two weeks before taking leave are entitled to leave in the amount of time they were scheduled to work during that period.

Leave is compensated at the worker's regular rate for the last pay period or the state or local applicable minimum wage, whichever is highest. However, compensation for leave is capped at **\$511** per day and **\$5,110** total.

Workers must be provided with supplemental paid sick leave under the new law in addition to paid sick leave required under the Healthy Workplaces Healthy Families Act. Employers must display a [poster](#) where employees can easily read it. If employees do not frequent a physical workplace, the poster may be disseminated to employees electronically. Antiretaliation and antidiscrimination provisions apply. Employees denied COVID-19 supplemental paid sick leave can file a claim with the labor commissioner's office or a report of labor law violations.

Food Sector Employees

AB 1867 additionally codified into law Governor Newsom's [executive order](#) requiring large employers to provide up to 80 hours of paid leave for food sector workers for COVID-19-related reasons. Like the leave for non-food sector workers, the measure was intended to provide paid leave for employees not covered by the FFCRA's paid leave provisions. The order went into effect in April 2020.

The paid leave provisions for food sector workers are substantially the same as those for non-food sector workers (described above), including the permitted reasons for leave, the amount of leave, and compensation for leave. Covered workers include farmworkers, grocery workers and food delivery workers, among others.

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This [poster](#) must be displayed where food sector workers can easily read it. If workers do not frequent a physical workplace, the poster may be disseminated to workers electronically. [Click here](#) for more information.

Local Laws

The following entries describe select local leave laws enacted in response to the COVID-19 emergency. Additional localities (such as [San Mateo County](#), [Sonoma County](#) and [Santa Rosa](#)) have passed similar measures. Employers should familiarize themselves with the leave laws that apply in their county, city or town

- Long Beach—Effective May 19, 2020, a Long Beach [ordinance](#) imposes a paid sick leave requirement on employers that have 500 or more employees nationally, and that are not required to provide FFCRA emergency paid sick leave. Under the ordinance, full-time employees are entitled to 80 hours of paid leave, and part-time employees are eligible for paid leave in an amount equal to their average number of work hours over a two-week period, for specified COVID-19-related reasons. As with the FFCRA, different rates of compensation apply, depending on the reason for leave. The ordinance also contains pay caps and employee and employer exceptions, such as for health care worker and emergency responder employees (as defined in the ordinance).
- Los Angeles—Mayor Eric Garcetti has issued a [public order](#), effective April 10, 2020, requiring up to 80 hours of supplemental paid sick leave for certain workers for specified COVID-19-related reasons. The order applies to private employers with 500 or more employees within the city of Los Angeles, or 2,000 or more employees within the United States. The order includes employer and employee exemptions, and pay caps apply. The city has issued [rules](#) to implement the order.
- Los Angeles County—Under an [urgency ordinance](#), employees in unincorporated areas of Los Angeles County are entitled to 80 hours of supplemental paid sick leave for specific COVID-19-related reasons, retroactive to March 31, 2020. Part-time employees receive paid sick leave equal to their average two weeks' pay. Pay is capped at \$511 per day and \$5,110 total.

The ordinance applies to employers with 500 or more employees nationally, but employers covered by the FFCRA or the state order requiring paid leave for food sector employees are exempt. Employees who are emergency responders or health care providers, as defined in the ordinance, are not entitled to the leave.

- Oakland—On May 12, 2020, Oakland passed a [law](#) requiring all employers within the city to provide their workers with emergency paid sick leave for specified COVID-19-related reasons, including being at least 65 years old or at other risk of serious illness from COVID-19 exposure. The law took effect immediately upon passage. Full-time workers receive 80 hours of leave, while part-time workers are entitled to an amount of leave equal to their average work hours over a 14-day period, based on hours worked during the period Feb. 3 - March 4, 2020. Additionally, the ordinance requires employers to compensate all employees laid off on or after May 12, 2020, immediately upon separation for paid sick leave they accrued under Oakland's existing paid sick leave law.

Employers may take a credit towards the leave required in the ordinance for any emergency paid sick leave they provided an employee under the FFCRA. Pay caps and exemptions, including for small employers (fewer than 50 employees) and health care worker and emergency responder employees, apply.

The city has issued FAQs on the ordinance.

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- Sacramento—Under a city [ordinance](#) effective June 30, 2020, employers must provide employees up to 80 hours of supplemental paid sick leave for specified COVID-19-related purposes. The ordinance applies only to employers that have 500 or more employees nationally and are exempt from FFCRA paid sick leave requirements. Exceptions apply for employees who are emergency responders or health care providers, and employers can use certain employee leave provided for COVID-19 purposes as a credit toward the leave required under the ordinance. As with FFCRA paid sick leave, compensation varies according to the reason for the leave, and daily and aggregate pay caps apply.
- San Francisco—Effective April 17, 2020, the San Francisco Public Health Emergency Leave Ordinance requires employers with 500 or more employees worldwide to provide their San Francisco employees with up to 80 hours of emergency paid sick leave for certain coronavirus-related purposes. Click here for [FAQs](#) from the city on the law.

The city of San Francisco has also passed the Workers and Families First Program, providing \$10 million to businesses with employees in San Francisco to provide five days of sick leave beyond employers' existing policies. The additional sick leave is available only to employees who have exhausted their currently available sick leave, have exhausted or are not eligible for federal or state supplemental sick leave, and whose employer agrees to extend sick leave beyond current benefits. The city has released an [employer guide](#) on the program.

The city has also published [guidance](#) on San Francisco Paid Sick Leave and the coronavirus.

- San Jose—San Jose passed a paid sick leave [ordinance](#), effective April 8 – Dec. 31, 2020, in response to the COVID-19 crisis. The ordinance is meant to fill the gaps left by the FFCRA, and it requires employers to provide eligible employees with up to 80 hours of paid sick leave for specified COVID-19 related reasons. The city has issued [FAQs](#) on the ordinance.

Colorado

Effective July 14, 2020, through Dec. 31, 2020, the Colorado [Healthy Families and Workplaces Act](#) expands paid sick leave under the federal Families First Coronavirus Response Act (FFCRA) to cover Colorado employers and employees exempt from the federal law. This law replaces the Colorado Health Emergency Leave with Pay ("HELP") rules that had mandated paid sick leave for certain workers affected by COVID-19. [Click here](#) for more information.

Connecticut

The state has issued [FAQs](#) on the application of various employment laws and programs—including the state's paid sick leave and family leave requirements—to workers and businesses affected by COVID-19.

District of Columbia

The District's Accrued Sick and Safe Act was [amended](#) to include the requirement that employers with between 50 and 499 employees must provide employees with up to 80 hours of **paid public health emergency leave**. The requirement is effective beginning April 10, 2020, and for the duration of the COVID-19 emergency declared by the mayor. The leave is available for the same reasons emergency paid sick leave is permitted under the FFCRA; employees must have worked for their employer for at least 15 days to be eligible.

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Employees may only use the leave concurrently with or after exhausting any other paid leave for which they are eligible for covered reasons under federal law, District law or an employer's policies. In addition, employers may reduce an employee's public health emergency leave by the amount of such other paid leave the employee has taken. If leaves are taken concurrently, the employer may reduce the employee's emergency health leave pay by the amount of compensation the employee receives under the other concurrent leave.

Employers that are health care providers are exempt from the requirement. Employers may require employees to provide reasonable notice of the need for leave in the event of an emergency, and 48 hours' notice for other reasons. Employers who contribute to an employee's health insurance may require certification of the employee's need for three or more consecutive days of leave, but the employee has one week after returning to work to provide the certification.

The District also expanded its **Family and Medical Leave Act** (DCFMLA) to allow workers who have been employed by their employer for at least 30 days to use up to 16 weeks of unpaid COVID-19 leave due to:

- A health care provider's recommendation that the employee isolate or quarantine, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19;
- A need to care for a family member or an individual with whom the employee shares a household who is under a government or health care provider's order to quarantine or isolate; or
- A need to care for a child whose school or place of care is closed or whose childcare provider is unavailable.

The right to COVID-19 leave ends when the public health emergency has ended, even if an employee has not exhausted the 16-week entitlement. The requirement applies to all employers, regardless of the number of employees they employ in the District. Employers may require certain certifications, and any paid leave used by an employee for COVID-19 family and medical leave purposes counts against the 16 workweeks of allowable leave. Employees may, but are not required to, use DCFMLA leave before other leave. Violations are subject to penalties of \$1,000 each.

Illinois

- Chicago—the city passed an [ordinance](#) banning retaliation against employees for staying home from work for certain COVID-19-related reasons, including caring for others with COVID-19. The law provides employees with a private right of action for violations, allowing damages of three times the wages the employee would have earned and attorneys' fees, in addition to other enforcement actions. The ordinance took effect on May 20, 2020. The city has issued [FAQs](#) on the ordinance.

Michigan

Under an April 2020 [executive order](#), Michigan employers were prohibited from discharging, disciplining or otherwise retaliating against employees for staying home when they are at particular risk of infecting others with COVID-19. If employees had exhausted their paid leave, they were allowed to take leave as unpaid under the order. The order applied to employees who themselves, or whose close contacts, tested positive for COVID-19 or displayed one or more of the principal symptoms of COVID-19.

On Aug. 27, 2020, Governor Whitmer issued a new [executive order](#) replacing the April order. While the orders are substantially similar, the new order alters the language surrounding the symptoms of COVID-19 to include any one of the following not explained by a known medical or physical condition: a fever, an uncontrolled cough, or shortness of breath; or at least two of the following not explained by a known medical or physical condition: loss of taste or smell, muscle aches



("myalgia"), sore throat, severe headache, diarrhea, vomiting or abdominal pain. Workers must be allowed to stay home until 24 hours have passed since the resolution of fever without medication or 10 days have passed since their symptoms first appeared or they tested positive.

Nevada

The Nevada Labor Commissioner's Office has issued [guidance](#) on employees' use of leave for COVID-19 purposes under the state's new paid leave law. According to the guidance, employees may elect to use available paid leave or other applicable leave while out on a mandatory government quarantine, but employers may not require that employees use the leave for this purpose.

New Jersey

Recently passed [legislation](#) in New Jersey prohibits employers from terminating or refusing to reinstate employees for taking time off (as instructed by a medical professional) due to COVID-19. Another new [law](#) expands the definition of "serious health condition" in the state's temporary disability insurance (TDI) and family leave insurance (FLI) programs to allow benefits when a person is diagnosed with or suspected of exposure to a communicable disease, or to take care of a family member similarly affected.

The legislation also expands New Jersey's earned sick leave law to permit the use of earned sick time for isolation or quarantine recommended or ordered by a provider or public health official as a result of suspected exposure to a communicable disease, or to care for a family member under similar isolation or quarantine.

An additional [law](#) enacted on April 14, 2020, expands the state's Family Leave Act to allow employees to take up to 12 weeks of unpaid time off to care for a family member as a result of an epidemic of a communicable disease, or efforts to prevent spread of a communicable disease. The job-protected leave also applies to employees requiring leave to provide care or treatment for their child if the child's school or place of care is closed in response to a public health emergency.

The state's Department of Labor and Workforce Development has developed [printable guides](#) outlining COVID-19-related benefits for New Jersey employees. These guides explain the applicability of benefits like earned sick leave, unemployment insurance, temporary disability and family leave insurance, and workers' compensation in various COVID-19-related situations.

New York

New York state enacted a [new law](#) providing leave for employees subject to a quarantine or isolation order due to COVID-19, effective March 18, 2020. Whether and how much employee compensation is required during the leave depends on the size and net income of the employer, as follows:

- **\$1 million or less, and up to 10 employees:** Unpaid leave through the end of the quarantine or isolation. (Employees are eligible for paid family leave and disability benefits.)
- **More than \$1 million, and up to 10 employees:** Leave through the end of the quarantine or isolation, at least five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **Between 11 and 99 employees:** Leave through the end of the quarantine or isolation, five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **100 or more employees:** 14 days of paid sick leave during quarantine or isolation.
- **Public employers:** 14 days of paid sick leave during quarantine or isolation.



The law also allows paid family leave for employees to care for children under a quarantine or isolation order. Employees eligible for federal COVID-19-related leave may take state leave only to the extent that it exceeds the federal leave. Exceptions to the leave requirement apply for asymptomatic or undiagnosed employees who can work virtually, and for employees who traveled to affected regions (including states on New York's travel advisory) for non-work purposes. For further information, see the state's [FAQs](#), or contact the [New York Department of Labor](#).

Oregon

The Oregon Bureau of Labor and Industries issued a [temporary rule](#) clarifying that Oregon family leave covers an employee's absence to care for his or her child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.

Oregon has also issued [guidance](#) on the use of sick time (which may also be used for public health school closures) in the context of COVID-19.

In addition, a [temporary rule](#) effective Aug. 2 – Dec. 26, 2020, allows approved, accrued leave to count as hours worked during the week, for purposes of determining an employee's eligibility for workshare benefits. This does not apply to leave taken for vacation. It does apply to leave taken for other reasons, including because the employee is sick, is caring for someone else who is sick, is on jury duty, or because of COVID-19-related reasons.

Pennsylvania

- Philadelphia— The city has expanded its employee leave ordinance to require paid **public health emergency leave** for workers not covered by the FFCRA. Under the [new mandate](#), signed into law by Mayor Jim Kenney on Sept. 17, 2020, individuals may take up to 112 hours of paid leave for the same reasons leave is permitted by the FFCRA, beginning on the date a public health emergency is declared. The ordinance expires Dec. 31, 2020.

All employers are covered, except those whom the city is legally prohibited from regulating. Certain collective bargaining agreements are also exempt from the ordinance. Employees are covered if they work in Philadelphia for one or more hiring entities for 40 hours annually, and they:

- Are not entitled to FFCRA leave from the hiring entity; or
- Were exempted from FFCRA leave at the hiring entity's option.

The ordinance expressly covers domestic workers (including child care providers, elder companions and house cleaners), home care workers, food delivery drivers, and transportation network drivers, among others. However, workers who are reasonably able to work remotely are not entitled to leave.

Full-time employees receive 80 hours of leave, or the average hours worked over a 14-day period (whichever is greater), up to a 112-hour maximum. Part-time employees receive leave equal to their average hours worked over a 14-day period, and the ordinance provides a calculation method for variable hour workers. Employers may require the new leave to run concurrently with other public health emergency leave required by law, and if employers have leave policies that meet or exceed the new mandate, they are not required to provide additional leave. The ordinance contains notice, nonretaliation, recordkeeping and enforcement provisions.

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Before the public health emergency leave ordinance was enacted, [emergency regulations](#) were issued allowing employees covered by the city's [sick leave law](#) to use that leave for specified COVID-19-related reasons. [Click here](#) for more information.

Rhode Island

The Rhode Island Division of Labor and Training is waiving certain eligibility requirements for individuals filing COVID-19-related claims under the state's temporary disability insurance and temporary caregiver insurance programs. The Division has developed a [fact sheet](#) with further information.

Washington

Food production employers are [prohibited](#) from operating between **Aug. 18, 2020, and Nov. 13, 2020**, unless they provide employees not covered by FFCRA leave with **emergency supplemental paid sick leave**. "Food production employers" include those operating:

- Orchards, fields and dairies;
- All other industries identified in Washington Administrative Code 296-307-006 (covering agricultural operations), with some exceptions;
- Fruit- and vegetable-packing warehouses; and
- Meat and seafood processors and packers.

The requirement covers RCW 49.30 farm labor contractors who are paying wages to a covered worker.

Covered workers include, but are not limited to:

- Washington state-based workers;
- Seasonal or migrant workers (as defined by the federal Migrant and Seasonal Agricultural Worker Protection Act); and
- Temporary foreign workers lawfully present in the United States to perform agricultural, temporary or seasonal labor or services under the Immigration and Nationality Act.

Covered workers may use paid leave if they are:

- Subject to a quarantine or isolation order related to COVID-19;
- Advised by a health care official or provider to self-quarantine or self-isolate due to concerns related to or a positive diagnosis of COVID-19;
- Prohibited from working due to health concerns related to the potential transmission of COVID-19; or
- Experiencing COVID-19 symptoms and seeking a medical diagnosis.

Up to 80 hours of paid leave must be provided to full-time workers and those scheduled to work at least 40 hours in the preceding two weeks. However, for these workers, employers must substitute the emergency supplemental paid leave with any other paid sick leave available.

Covered workers scheduled to work less than full time or less than 40 hours in the preceding two weeks receive leave equal to the hours they were normally scheduled to work during that period. If these workers have a variable schedule, they receive 14 times the average number of hours worked daily in the period preceding the leave.

Leave must be paid at an hourly rate equal to \$430 for 40 hours, up to a maximum of \$860 for 80 hours. Details of an employer reimbursement program are expected from the Washington Department of Commerce in the near future.

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Violators are subject to criminal penalties.

- Seattle—On June 1, 2020, the Seattle City Council passed an ordinance requiring food delivery network companies and transportation network companies to provide gig workers working in Seattle with paid sick and paid safe time during the COVID-19 emergency. The ordinance took effect July 12, 2020. It covers employers with at least 250 gig workers worldwide, and it mandates at least one day of earned sick and safe time for every 30 days worked in Seattle. Accrual is retroactive to Oct. 1, 2019, or the beginning of employment, whichever occurred or occurs later.

The law will remain in effect for three years after the end of the civil emergency proclaimed by the mayor on March 3, 2020; three years after any Seattle COVID-19 civil emergency proclaimed by a public official; or on Dec. 31, 2023, whichever is latest.

In addition, an emergency rule makes it an impermissible unreasonable burden under the city's paid sick and safe time law for employers to require verification of an employee's illness from a health care provider. Alternative means of verification are suggested in the rule. The rule was scheduled to remain in effect until June 7, 2020.

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