



ATTORNEYS AT LAW

## **CALIFORNIA'S COVID-19 SUPPLEMENTAL PAID SICK LEAVE**

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On March 29, 2021, SB95 goes into effect in California. SB95 applies to all California employers who have 25 or more employees and provides for COVID-19 supplemental paid sick leave for covered employees who are unable to work or telework due to:

- The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.
- The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.
- The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.
- The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The covered employee is caring for a family member, as defined in subdivision (c) of Section 245.5 of the California Labor Code, who is subject to an order or guidelines as described in the first bullet point above, or who has been advised to self-quarantine as set forth in the second bullet point above.
- The covered employee is caring for a child, as defined in subdivision (c) of Section 245.5 of the California Labor Code, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

Employees who utilize the leave for any of the foregoing reasons are considered to be covered employees under SB95.

While SB95 goes into effect on March 29, 2021, it is retroactive to qualifying leave taken on or after January 1, 2021; however, employers do not have to go back and reclassify leave taken before March 29, 2021 as COVID-19 supplemental paid sick leave, but can wait for the employee to request the same.

Covered employees are entitled to 80 hours of COVID-19 supplemental paid sick leave, if the covered employee is considered to work full time by the employer or worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave. Part-time employees are entitled to the total number of hours the covered employee is normally scheduled to work for the employer over two weeks. Variable covered employees are likewise entitled to paid leave, but the amount of leave requires a calculation depending upon how long the covered employee has worked for the employer.

This paid leave is currently capped at \$511 per day and \$5,110 in the aggregate. Subject to the foregoing cap, non-exempt covered employees are paid the highest of: (1) the regular rate of pay for the work week in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that work week; (2) dividing the covered 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; (3) the state minimum wage; or (4) the local minimum wage to which the covered employee is entitled.

Employers cannot require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave, except in cases of exclusion pay under the California Division of Occupational Safety and Health COVID-19 Emergency Temporary Standards.

Further, there are posting requirements with regard to SB95, which can be found at: <https://www.dir.ca.gov/dlse/2021-COVID-19-Supplemental-Paid-Sick-Leave.pdf>. For those employees who work off-site, the foregoing notice should be supplied to them remotely.

Like prior paid leave laws in California, the amount of leave available must be set forth on employees' paystubs.

***SB95 expires on September 30, 2021.***

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