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## **Employment Update: NEW COVID Supplemental Paid Sick Leave**

On Monday the California legislature passed a new COVID-19 Supplemental Paid Sick Leave Act (AB-84) and Governor Newsom is expected to sign it into law this week. The law will take effect 10 days after the Governor signs, but it is retroactive to January 1 so employers can start preparing for compliance now. We expect the DIR to release an updated FAQ on the new law once it passes, but for now we have provided the key details below.

- **26+ Employees:** The law requires employers with 26 or more employees to provide supplemental paid sick leave for certain COVID-19 related reasons.
- **Retroactive to January 1 and through September 30:** The law is retroactive to January 1 and extends until September 30, 2022. Employers are required to provide retroactive payments to any employees who were provided with an unpaid leave for qualifying reasons since January 1 at the request of the employee (either orally or in writing). The retroactive payment must be paid on or before the payday for the next full pay period after it is requested by the employee.
- **Two Categories of Paid Leave (up to 40 hours each):** The new supplemental paid sick leave is split into two categories – the first allows employees to take up to 40 hours of leave for COVID related reasons similar to the prior law, and the second allows employees to take up to 40 hours of leave if they or their family member test positive for COVID-19.
- **First Category:** Employers must provide up to 40 hours of supplemental paid sick leave for employees that are unable to work or telework due to any of the following reasons:
  - Employee is subject to quarantine or isolation order or guidelines due to COVID-19;
  - Employee is advised to quarantine or isolate by health care provider;
  - Employee is attending an appointment for themselves or a family member to get a vaccine or booster and/or experiencing symptoms from a vaccine or booster or caring for a family member who is experiencing symptoms from a vaccine or booster (limit of 24 hours per vaccination/booster – see below);
  - Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  - Employee is caring for a family member who is subject to quarantine, or has been advised to isolate;
  - Employee is caring for a child whose school or child care is closed or unavailable due to COVID-19.
- **Second Category:** Employees who test positive for COVID-19, or have to care for a family member who tests positive, are entitled to an additional 40 hours of supplemental paid sick leave. Employers can request proof of a positive test for the employee or family member prior to providing the supplemental paid sick leave. If an employee refuses to get tested or provide test results to the employer, employers are not obligated to provide the additional 40 hours of supplemental paid sick leave. Employers can require documentation of a positive COVID test for retroactive payments requested by the employee as well. Employers are required to pay for the test for employees, but it is unclear if employers will also be required to pay for tests for family members of employees.

- **Amount of Leave:** Full-time employees that work at least 40 hours per week on average are entitled to 40 hours of supplemental paid sick leave under each category, for a total of 80 hours of supplemental paid sick leave. Other non-full-time employees are entitled to the average amount of hours they normally work over a 14-day period.
- **24-hour Limit for COVID Vaccine/Booster:** Employers can limit the supplemental paid sick leave an employee can use for each vaccine or booster and any related side effects, for themselves or a family member, to three days (24 hours), unless the employee provides verification from a healthcare provider that the symptoms are continuing after three days.
- **Amount of Pay:** Supplemental paid sick leave should be paid at the employee's **regular rate of pay**, up to a maximum of \$511 per day and no more than \$5,110 total per employee. An employee's regular rate includes any commissions or non-discretionary bonuses.
- **Must List Amount Used on Wage Statements:** The COVID-19 Supplemental Paid Sick Leave is a separate entitlement from other paid sick leave provided by the employer and must be listed separately on the written notice or wage statement provided to employees each pay period. However, instead of listing the available balance of supplemental paid sick leave, employers are only required to list the amount of leave that has been used to date. If an employee has not yet used any leave, their statement must list "zero."
- **Cannot Require Substitution of Other Leaves:** The supplemental paid sick leave is in addition to other paid leave. Thus, employers cannot require employees to substitute their vacation, PTO, or other paid sick leave when using supplemental paid sick leave.
- **Distinct from Cal/OSHA ETS Exclusion Pay:** The law states that employers cannot require employees to first exhaust their supplemental paid sick leave when exclusion pay is required to be paid under the Cal/OSHA ETS. Based on this, it appears employers cannot apply these hours toward the exclusion pay obligation when employees are required to be excluded from the workplace due to a workplace exposure to COVID-19 but we are hoping for clarification on this requirement in the forthcoming FAQs.
- **Notice Requirement:** The Labor Commissioner is required to make a model notice available for employers to send to employees. The notice should be posted in the workplace and must be emailed to employees who do not frequent a workplace.

As always, please contact us with any questions or concerns.