

### SB 95: BILL EXTENDS CALIFORNIA'S COVID-19 PAID SICK LEAVE LAW

- Governor Gavin Newsom signed into law SB 95
- Two leave reasons related to COVID-19 vaccines are included in the new legislation
- The compensation provisions of the law are based on whether the employee is exempt or nonexempt
- Implementation of SB 95 will be complicated by its retroactive application to sick leaves taken between January 1, 2021 and March 29, 2021
- SB 95 includes a new posting requirement

On March 19, 2021, Governor Gavin Newsom signed into law SB 95 (Chapter 13, Statutes of 2021), which extends California's COVID-19 paid sick leave law, which had expired on December 31, 2020. The [original California COVID-19 paid sick leave bill](#) was enacted last September, by AB 1867, to fill in some of the gaps left by a patchwork of legislation, executive and regulatory action at federal and state levels. SB 95 reestablishes the requirement that employers who have more than 25 employees provide COVID-19 supplemental paid sick leave and backdates that requirement to leaves taken on or after January 1, 2021. This law goes into effect ten days after enactment, or on March 29, 2021.

The supplemental paid sick leave will be available to eligible employees who are unable to work or telework because they are:

- Subject to quarantine or isolation related to COVID-19;
- Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- **Attending an appointment to receive a COVID-19 vaccine;**
- **Experiencing symptoms related to a COVID-19 vaccine that prevents the employee from being able to work;**
- Experiencing COVID-19 symptoms and seeking a medical diagnosis;
- Caring for a family member who is subject to quarantine or isolation; or
- Caring for a child whose school or place of care is closed due to COVID-19

The two leave reasons related to COVID-19 vaccines are new in this legislation. Like AB 1867, SB 95 requires employers to provide up to two weeks, or eighty hours, of COVID-19 supplemental leave to eligible employees. This leave is in addition to any other paid sick leave that may be available under existing law. Firefighters who were scheduled to work more than 80 hours for the employer in the two weeks preceding the leave will be entitled to an amount of supplemental paid sick leave equal to the total number of scheduled work hours in those preceding two weeks.

The compensation provisions of the law are based on whether the employee is exempt or nonexempt. For exempt employees, the COVID-19 supplemental paid sick leave is to be calculated in the same manner as the employer calculates wages for other forms of paid leave. For non-exempt employees, each hour of COVID-19 supplemental paid sick leave is to be compensated based on the highest pay rate of the following:

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- Calculated in the same manner as the regular rate of pay for the workweek in which the employee uses the leave;
- Calculated by dividing the total wages (not including overtime premium pay) by the total hours worked in the full pay period of the prior 90 days worked;
- The state minimum wage; or
- Local minimum wage.

Notwithstanding these provisions, employees whose rate of pay is set by law or collective bargaining agreement are to be compensated at their regular rate of pay. And under no circumstances shall the compensation exceed \$511 per day or \$5,110 in total, unless federal legislation is enacted to increase these amounts.

The law also specifies that an employer may not require a covered employee to use other paid or unpaid leave before or in lieu of COVID-19 supplemental paid sick leave. It does, however, allow an employer to require an employee to exhaust their COVID-19 supplemental paid sick leave prior to taking [COVID-19 Emergency Temporary Standards](#) leave associated with employees excluded from the workplace due to COVID-19 exposure.

Implementation of this law will be complicated by its retroactive application to sick leaves taken between January 1, 2021 and March 29, 2021. The law authorizes an employer to count the hours of paid leave provided to employees for COVID-19-related reasons during that time as COVID-19 supplemental paid sick leave. Employers are required to make retroactive payment to employees who took unpaid leave for COVID-19-related reasons during this time.

There is also a posting requirement associated with this new law. Within seven days of the effective date, the California Labor Commissioner is to make a model notice publicly available for employers to display as a poster in the workplace. An employer may satisfy this requirement for workers who do not frequent a workplace by disseminating notice through electronic means, such as email.

The COVID-19 supplemental paid sick leave law is effective through September 30, 2021. However, any employee on a leave at the time the law expires will be entitled to the full amount of COVID-19 paid sick leave available to them.

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