

# California Employers Face New COVID-19 Supplemental Paid Sick Leave Requirement

## Key Points

- California employers with more than 25 employees must provide an additional 80 hours of COVID-19 supplemental paid sick leave to full-time employees for qualified reasons
- COVID-19 supplemental paid sick leave is retroactive to January 1, 2021, and must be paid out on an employee's oral or written request made on or after March 29
- The amount of COVID-19 supplemental paid sick leave available must be listed as a separate line item on employees' wage statements, no later than the first full pay period after March 29

Governor Newsom signed SB 95 on March 19, creating new Labor Code Sections 248.2 and 248.3. The new statute, which takes effect on March 29, applies to all employers with more than 25 employees and provides a new 80 hours of paid sick leave (max \$511/day and \$5110 total) for full-time employees unable to work or telework due to the following COVID-19 related reasons:

- The employee is subject to a quarantine or isolation period related to COVID-19 (based on order/guidelines from the California DPH, the federal CDC, or a local health officer with jurisdiction over the workplace), has been advised by a healthcare provider to quarantine due to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis
- The employee is caring for a family member who is subject to a quarantine or isolation period related to COVID-19 (based on order/guidelines from the California DPH, the federal CDC, or a local health officer with jurisdiction over the workplace) or who has been advised by a healthcare provider to quarantine due to COVID-19
- The employee is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises
- The employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms

Part-time employees are entitled to a pro-rata supplemental paid leave benefit, calculated at 14x the average number of hours the employee worked each day in the six months preceding the



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leave. Part-time employees who have worked for two weeks or less are entitled to the number of supplemental paid sick leave hours that they worked in the preceding two weeks. The new law has special rules for firefighters, who are entitled to more than 80 hours of COVID-19 supplemental paid sick leave if they were scheduled to work more than 80 hours in the two weeks preceding the leave.

The supplemental benefits of SB 95 are retroactive to January 1, 2021. If an employee took leave between January 1 and March 28, 2021, for one of the qualifying reasons listed above, and orally or in writing requests the retroactive application of the benefit, it must be paid in the next pay period following the request. However, any supplemental COVID-19 related benefits that have been paid by the employer since January 1, 2021, for the reasons specified in the statute, can be credited toward the employer's obligations under the statute. This means that employers who chose voluntarily to provide FFCRA paid leave after January 1 (or any other supplemental paid leave for COVID-19 purposes) may be able to offset those hours and pay against their obligations under the new state law. If an employer paid for the prior leave at a lesser rate than what is required under the new state law, then the employer may make a retroactive payment to make up the difference (and must make that payment upon request of the employee). Employers with fewer than 500 employees, as well as state and local government employers, may have the option to obtain federal tax credits for COVID-19 related paid sick leave provided.

Starting with the first full pay period after March 29, employers must list the amount of an employee's available COVID-19 supplemental paid sick leave on the employee's wage statement as a separate line item (similar to what is required for regular paid sick leave). Employers also must display a required poster about [2021 supplemental paid sick leave](#) and disseminate the notice electronically to employees who do not frequent a workplace.

Employees cannot be required to use other types of paid time off before using COVID-19 supplemental paid sick leave and are authorized to choose how many COVID-19 supplemental paid sick hours to use. Employers may, however, require employees to use COVID-19 supplemental paid sick time before paying exclusion pay under the Cal/OSHA Emergency Temporary Standards.

The requirement to provide 2021 COVID-19 supplemental paid sick leave will end on September 30, 2021, except that if the law expires during an employee's use of this leave, the employee can finish taking the amount of leave to which they are entitled.

For more information on the new requirements, see the [FAQ posted by the Division of Labor Standards Enforcement](#). You can also reach out to your Hanson Bridgett employment attorney with any additional questions.

For more information, please contact:

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