

## CALIFORNIA 2021 COVID-19 SUPPLEMENTAL PAID SICK LEAVE (SPSL)

March 29, 2021

The new 2021 COVID-19 Supplemental Paid Sick Leave law allows covered employees to take up to an additional 80 hours of COVID-19 related sick leave from **January 1, 2021 through September 30, 2021**.

Note: If the employee took leave for the reasons below (expanded reasons from the original California COVID-19 supplemental paid sick leave law) from **January 1, 2021 to March 28, 2021** and did not get paid by the employer, the employee should make an oral or written request to the employer for payment.

### Covered Employers and Employees

Covered employees in the public or private sectors who work for employers with 25 employees.

**Qualifying Reasons for Leave** (Employees determine how many hours of leave they need to use—up to the limits)

An employee who is unable to work or telework due to any of the following reasons:

- **Caring for Yourself:** The employee is subject to quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace, has been advised by a healthcare provider to quarantine, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- **Caring for a Family Member:** The covered employee is caring for a family who is subject to a COVID-19 quarantine or isolation period or has been advised by a healthcare provider to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- **Vaccine-Related:** The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

### “Family member” means any of the following:

- (1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
- (2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- (3) A spouse.
- (4) A registered domestic partner.
- (5) A grandparent.
- (6) A grandchild.
- (7) A sibling.

## Amount of Leave

### Wage Payment Amount

Rate of pay for COVID-19 Supplemental Paid Sick Leave: Non-exempt employees must be paid the **highest** of the following for each hour of leave:

- Regular rate of pay for the workweek in which leave is taken
- State minimum wage
- Local minimum wage
- Average hourly pay for preceding 90 days (not including overtime pay) – Calculated by dividing the 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.

Exempt employees must be paid the same rate of pay as wages calculated for other paid leave time.

Wages are **not to exceed \$511 per day and \$5,110 in total** for 2021 COVID-19 Supplemental Paid Sick leave. Payment for leave taken must be made no later than the payday for the next regular payroll period after leave was taken.

Schedule	Defined	Hours Entitled		
<b>Full-Time</b>	Worker worked or was scheduled to work, on average, at least 40 hours per week in the two weeks preceding the date the work took leave	80 hours		
<b>Part-time with a Normal Work Schedule</b>	Workers who are not "full" time who have a normal work schedule.	Equal to the total number of hours they are normally scheduled to work over two weeks		
<b>Part-time with a Variable Work Schedule</b>	Workers who are not "full" time who work a variable work schedule.  Note: If the variable schedule calculation results in an average work schedule of at least 40 hours per week, the variable-scheduled work	<b>Tenure with Employer</b>	14+ Days	<b>Calculation Example</b>  In calculating the average number of hours worked by a part-time covered employee with a variable schedule over the past six months, the figure is determined based on the total number of days in the 6-month period, not just the number of days worked. Below is an example using a 6-month period.  Example: Using a 6-month period that contains a total of 182 days (26 weeks):

	would be considered full time and entitled to 80 hours (does not require payment for more than 80 hours).			Total Number of hours Worked during the 6--Month Period	520 hours									
				Total Number of Days in a 6-Month Period	182 days									
				Average Number of Hours Worked Each Day in the 6-Month Period	$520 \text{ hours} \div 182 \text{ days} = 2.857 \text{ hours}$									
				2021 COVID-19 Supplemental Paid Sick Leave Entitlement	$2.857 \text{ hours} * 14 = 40 \text{ hours}$									
	More than 14 days but <6 months	The total length of employment is to be used.												
	14 days or fewer	The total number of hours worked in the preceding two weeks they took leave.	<p><b>Example:</b> A new worker has worked for a total of 2 days: 1 day for 1 hour and a second day for 6 hours over the past two weeks:</p> <table border="1"> <tr> <td>Total Number of hours Worked during the Two-Week Period</td> <td>7 hours</td> </tr> <tr> <td>Total Number of Days in a Two-Week Period</td> <td>14 days</td> </tr> <tr> <td>Average Number of Hours Worked Each Day in the Two-Week Period</td> <td><math>7 \text{ hours} \div 14 \text{ days} = .5 \text{ hours}</math></td> </tr> <tr> <td>COVID-19 Supplemental Paid Sick Leave Entitlement</td> <td>.5 hours * 14 = 7 hours</td> </tr> </table>				Total Number of hours Worked during the Two-Week Period	7 hours	Total Number of Days in a Two-Week Period	14 days	Average Number of Hours Worked Each Day in the Two-Week Period	$7 \text{ hours} \div 14 \text{ days} = .5 \text{ hours}$	COVID-19 Supplemental Paid Sick Leave Entitlement	.5 hours * 14 = 7 hours
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### Employer Offset (Credits)

There can be an offset (credit) of hours for an employer if an employer paid supplemental sick leave benefits in an amount equal to or greater than the amount of pay the new law requires if between January 1, 2021 to March 28, 2021 either the employer voluntarily or through a local law in effect (e.g., Sacramento or any of the other local California COVID-19 supplemental paid sick leave laws), or that became effective on or after, January 1, 2021, if that leave was provided to an employee for any of the California law's covered reasons.

The number of hours of leave corresponding to the amount of the retroactive payment counts toward the total number of hours of 2021 COVID-19 Supplemental Paid Sick Leave that the employer is required to provide to the covered employee, under the following circumstances:

- The retroactive payment is taken by the covered employee between January 1, 2021 and March 28, 2021

- The leave taken by the covered employee was for one of the qualifying reasons under the 2021 COVID-19 Supplemental Paid Sick Leave law, and
- The retroactive payment by the employer pays the covered employee the amount required under the 2021 COVID-19 Supplemental Paid Sick Leave law.

### **Requesting Leave**

An employer must make SPSL available for immediate use upon the worker's oral or written request.

An employer may not deny a worker 2021 COVID-19 Supplemental Paid Sick Leave based solely on a lack of certification from a health care provider. The leave is not conditioned on medical certification.

It may be reasonable in certain circumstances to ask for documentation before paying the sick leave when the employer has other information indicating that the covered employee is not requesting 2021 COVID-19 Supplemental Paid Sick leave for a valid purpose. In such a claim, the reasonableness of the parties' actions will undoubtedly come into play.

### **SPSL is in Addition to Other Paid Sick Leave, Paid Time Off, or Vacation Time an Employer Provides**

SPSL is to be provided in addition to any paid sick leave available to a worker under California's pre-COVID-19 Healthy Workplaces, Healthy Families Act of 2014 (i.e., California paid sick leave).

Also includes the prohibition against requiring workers to use other paid or unpaid leave, time off, or vacation the employer provides before, or in lieu of, using SPSL.

### **Retaliatory Action Prohibited**

No employer shall discharge, discipline, discriminate against, retaliate against, or reduce the compensation of any employee for seeking to exercise the employee's rights under this Section by any lawful means.

### **Unused SPSL**

An employee is not entitled, under any circumstances, to be paid for unused SPSL. Unused SPSL expires when this chapter sunsets.

# **2021 COVID-19 Supplemental Paid Sick Leave**

**Effective March 29, 2021**

Covered Employees in the public or private sectors who work for employers with more than 25 employees are entitled to up to 80 hours of COVID-19 related sick leave from January 1, 2021 through September 30, 2021, immediately upon an oral or written request to their employer. If an employee took leave for the reasons below prior to March 29, 2021, the employee should make an oral or written request to the employer for payment.

**A covered employee may take leave if the employee is unable to work or telework for any of the following reasons:**

- Caring for Yourself: The employee is subject to quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace, has been advised by a healthcare provider to quarantine, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Caring for a Family Member: The covered employee is caring for a family member who is subject to a COVID-19 quarantine or isolation period or has been advised by a healthcare provider to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- Vaccine-Related: The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

## **Paid Leave for Covered Employees**

- 80 hours for those considered full-time employees. Full-time firefighters may be entitled to more than 80 hours, caps below apply.
  - For part-time employees with a regular weekly schedule, the number of hours the employee is normally scheduled to work over two weeks.
  - For part-time employees with variable schedules, 14 times the average number of hours worked per day over the past 6 months.
- Rate of Pay for COVID-19 Supplemental Paid Sick Leave: Non-exempt employees must be paid the highest of the following for each hour of leave:
  - Regular rate of pay for the workweek in which leave is taken
  - State minimum wage
  - Local minimum wage
  - Average hourly pay for preceding 90 days (not including overtime pay)
- Exempt employees must be paid the same rate of pay as wages calculated for other paid leave time.

**Not to exceed \$511 per day and \$5,110 in total for 2021 COVID-19 Supplemental Paid Sick leave.**

**Retaliation or discrimination against a covered employee requesting or using COVID-19 supplemental paid sick leave is strictly prohibited.** A covered employee who experiences such retaliation or discrimination can file a claim with the Labor Commissioner's Office. Locate the office by looking at the [list of offices on our website](http://www.dir.ca.gov/dlse/DistrictOffices.htm) (<http://www.dir.ca.gov/dlse/DistrictOffices.htm>) using the alphabetical listing of cities, locations, and communities or by calling 1-833-526-4636.

This poster must be displayed where employees can easily read it. If employees do not frequent a physical workplace, it may be disseminated to employees electronically.

