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## Client Alert

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### **CALIFORNIA ENACTS NEW COVID-19 SUPPLEMENTAL PAID SICK LEAVE LAW RETROACTIVE TO JANUARY 1, 2022**

California's COVID-19 supplemental paid sick leave (SPSL) law expired last September, without being renewed. Last week Governor Newsom enacted a new law providing SPSL with several modifications. The law covers employers with over 25 employees. It is retroactive to January 1, 2022 and is set to expire on September 30, 2022. Note that employers cannot require employees to first exhaust other forms of paid or unpaid time off before using SPSL.

#### **New Paystub Requirements**

Employers must provide written notice of the amount of SPSL that an employee has used through the pay period. These hours must be listed separately from the amount of regular paid sick days.

#### **Reasons for Leave**

Employees can take SPSL for themselves or to care for family members impacted by COVID-19. This includes children, parents, spouses, registered domestic partners, grandparents, grandchildren and siblings.

#### **Amount of Leave for Full-Time Employees**

The new law provides for two 40-hour sick leave "banks," each with a different purpose:

**Bank 1:** An employee can use up to 40 hours of SPSL if he or she is unable to work or telework for the following reasons:

- Employee is subject to a quarantine or isolation period due to COVID-19, as defined by federal, state, or local orders or guidance.
- Employee has been advised by a health care provider to isolate or self-quarantine due to COVID-19 concerns.
- Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Employee is caring for a family member who is subject to a quarantine or isolation order, or who has been advised to isolate or self-quarantine by a health care provider due to COVID-19 concerns.
- Employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19.
- Employee is attending an appointment for himself or herself or for a family member to receive a COVID-19 vaccine or booster.<sup>1</sup>

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<sup>1</sup> Employees using leave for vaccine-related reasons can be limited to 3 days or 24 hours of paid sick leave. If more leave is requested, the employer may request verification from a health care provider that the symptoms of the employee or family member are related to a vaccine or booster.

- Employee is experiencing symptoms or is caring for a family member experiencing symptoms related to a COVID-19 vaccine or booster that prevents the employee from working or teleworking.

Bank 2: An employee may qualify for up to another 40 hours of SPSL if they test positive for COVID-19 or are caring for a family member who tested positive. Note that employees need not exhaust leave under Bank 1 before using leave under Bank 2. Employers may ask for proof of a positive COVID-19 test, including as to the affected family member. Employers may also request that the employee re-test on day 5.

#### Amount of Leave for Part-Time Employees

If the employee has a regular weekly schedule, the amount of leave is the total number of hours the employee normally works in one week. If the employee's hours vary, he or she is entitled to seven times the average number of hours worked each day for the employer in the six months preceding the date that the employee took COVID-19 SPSL. If the employee has not yet been employed for this length of time, then the calculation is made over the period of time the employee has been employed.

If the employee's hours vary, and the employee has only been working for the employer for 7 or fewer days, then the employee is entitled to the total number of hours he or she has worked for that employer.

#### Rate of Pay

A non-exempt employee's regular rate for purposes of SPSL is calculated in the same manner as the regular rate of pay for the workweek in which the employee uses SPSL, excluding any overtime pay. Alternatively, the regular rate is calculated by dividing the total wages, not including overtime pay, by the total non-overtime hours worked, in the full pay periods of the prior 90 days of employment.

The amount of pay required under the new law is capped at \$511 per day and \$5,110 in the aggregate to a covered employee.

#### Credits for Prior Paid Sick Leave

Employers who previously provided SPSL (beyond regular paid sick leave or vacation time) for time taken on or after January 1, 2022 may count those hours toward the newly enacted SPSL allotment.

#### Local SPSL Ordinances

While California's original SPSL law expired in September 2021, local ordinances such as those adopted by both the City and County of Los Angeles remain in effect. Employers may count leave provided under a local ordinance toward satisfying the state obligation under the new law. However, the leave must be provided for the same reasons and must compensate the employee in an amount equal to or greater than the amount provided under the state's new law.

#### Posting Requirements

Similar to notice requirements concerning regular paid sick leave laws, employers must post a notice about the new state SPSL law. The California Labor Commissioner is expected to develop a model notice that will be available to the public shortly.