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## Client Alert

April, 2021

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### **NEWSOM EXPANDS COVID-19 SICK LEAVE BENEFITS**

California's COVID-19 supplemental paid sick leave law expired December 31, 2020. On March 19, 2021, Governor Newsom enacted a new law which expands upon the prior sick leave benefits and imposes new workplace notice obligations upon employers. The law goes into effect March 29, 2021 and is retroactive to January 1, 2021. It is set to expire on September 30, 2021.

#### **Covered Employers/Employees**

All employers with more than 25 employees are subject to the new law. Employees who are unable to work or telework for one of the following reasons will be covered:

(A) The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.

(B) The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The covered employee is caring for a family member who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

(G) The covered employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

#### **Amount of Supplemental Paid Sick Leave**

A covered employee is entitled to up to 80 hours of COVID-19 supplemental paid sick leave, if:

- The employer considers the covered employee to work full-time; or
- The covered employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date that the employee took COVID-19 supplemental paid sick leave.

A covered employee who does not satisfy the criteria above is entitled to leave as follows:

- If the covered employee has a normal weekly schedule, the total number of hours the covered employee is normally scheduled to work for the employer over two weeks.
- If the covered employee works a variable number of hours, 14 times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took COVID-19 supplemental paid sick leave. If the covered employee has worked for the employer over a period of fewer than six months but more than 14 days, this calculation must instead be made over the entire period the covered employee has worked for the employer.
- If the covered employee works a variable number of hours and has worked for the employer over a period of 14 days or fewer, the total number of hours the covered employee has worked for that employer.

#### Rates of Compensation

Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following:

- (1) For nonexempt covered employees, by the highest of the following:
  - (a) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.
  - (b) Calculated by dividing the covered 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.
  - (c) The state minimum wage.
  - (d) The local minimum wage to which the covered employee is entitled.

COVID-19 supplemental paid sick leave for exempt covered employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

#### Benefit Cap

Employers are not required to pay more than \$511 per day and \$5,110 in the aggregate, unless federal legislation is enacted that increases these amounts beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act ("FFCRA"), in which case the new federal dollar amounts would apply as of the date the new amounts are applicable under the federal law.

An employer shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

#### Employer Notice Obligations

Beginning with the next full pay period following the date of the law's enactment on March 29, 2021, employers must provide employees with written notice that sets forth the amount of supplemental paid sick leave available for use, separate from paid sick days, on either the employees' itemized wage statements or in a separate writing provided on the designated pay date with the employees' payment of wages. Additionally, the availability of COVID-19 supplemental paid sick leave must be included in the workplace notice required under California Labor Code section 247 relative to sick leave benefits. The California Labor Commissioner's model notice can be found here: <https://www.dir.ca.gov/dlse/2021-COVID-19-Supplemental-Paid-Sick-Leave.pdf>

For purposes of COVID-19 supplemental paid sick leave only, if an employer's covered employees do not frequent a workplace, the employer may satisfy the notice requirement by disseminating notice through electronic means, such as by electronic mail.

#### Retroactivity

The requirement to provide COVID-19 supplemental paid sick leave takes effect 10 days after the date of enactment of this section on March 29, 2021, at which time the requirements apply retroactively to January 1, 2021. The provisions governing retroactive payments are as follows:

1. For any such leave taken, if the employer did not compensate the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled under the new law, then upon the oral or written request of the employee, the employer shall provide the covered employee with a retroactive payment that provides for such compensation.
2. For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee.
3. Retroactive payments must be paid on or before the payday for the next full pay period after the oral or written request of the covered employee. The retroactive payment must be reflected on the written notice for the corresponding pay period.

Covered employers should ensure that they familiarize themselves with these expanded California supplemental sick leave benefits and ensure prompt compliance with notice obligations. In addition, note that certain local supplemental sick leave laws (e.g. City and County of Los Angeles ordinances) are still in effect.