

CALIFORNIA ENACTS 2021 COVID-19 SUPPLEMENTAL PAID SICK LEAVE LAW

March 29, 2021

Overview

Effective March 29, 2021, Senate Bill (“SB”) 95 mandates that California employers with more than 25 employees provide up to 80 hours of supplemental paid sick leave (“2021 SPSL”) for certain COVID-related absences in addition to paid time off benefits employees otherwise receive by law or policy. The requirement to provide 2021 SPSL ends on September 30, 2021. SB 95 does not preempt local ordinances; so employers should be aware of additional municipal COVID-19 leave obligations.

2021 SPSL differs from COVID-related paid sick leave under the Families First Coronavirus Response Act (“FFCRA”) and the California COVID-19 Supplemental Paid Sick Leave laws, both of which expired on December 31, 2020.

Eligible Reasons

To be eligible for 2021 SPSL, the employee must be unable to work / telework due to one of the following reasons:

- **Caring for Self:** The employee is subject to a COVID-19 quarantine / isolation period or is experiencing symptoms of COVID-19 and seeking a diagnosis.
- **Caring for a Family Member:** The employee is caring for a family member who is subject to a COVID-19 quarantine / isolation period, or is caring for a child whose school / place of care is closed due to COVID-19. “Family members” include the employee’s spouse, registered domestic partner, parent (including in-laws), child (regardless of age or dependency), grandparent, grandchild, and sibling.
- **Vaccine-Related:** The employee is attending a vaccine appointment or cannot work/ telework due to vaccine-related symptoms.

Calculating Leave Entitlement

- **Full-Time Employees:** Employees are entitled to 80 hours of 2021 SPSL if the employer considers them “full time” or if, on average, they worked, or were scheduled to work, at least 40 hours per week in the 2 weeks preceding the date they took leave.

- **Part-Time Employees:** There are 3 methods to calculate the 2021 SPSL entitlement for part-time employees.
 - **Part-time employees with a regular weekly schedule** are entitled to the number of hours of 2021 SPSL leave the employee is normally scheduled to work over 2 weeks.
 - **Part-time employees with variable schedules who have worked for an employer for a period of more than 14 days** are entitled to 14 times the average number of hours they worked each day in the 6 months preceding the date the employee took 2021 SPSL. If the employee worked for a period of fewer than 6 months, the calculation would focus on the entire period of the employee’s employment. In calculating the average number of hours worked, 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 that contains a total of 182 days (26 weeks):

Total Number of Hours Worked During 6-Month Period	520 Hours
Total Number of Days in 6-Month Period	182 days
Average Number of Hours Worked Each Day in 6-Month Period	520 hours ÷ 182 days = 2.857 hours
2021 COVID-19 Supplemental Paid Sick Leave Entitlement	2.857 x 14 = 40 hours

- **Newly hired part-time employees with variable schedules who have worked for an employer for a period of 14 days or fewer** are entitled to the number of 2021 SPSL hours equivalent to the number of hours that they have worked in the preceding 2 weeks. Below is an example for a new employee who has worked a total of 2 days - 1 day for 1 hour and a second day for 6 hours - over the prior 2 weeks:

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 hours ÷ 14 days = .5 hours
2021 COVID-19 Supplemental Paid Sick Leave Entitlement	.5 hours x 14 = 7 hours

Calculating & Paying SPSL

The employer must provide payment for 2021 SPSL no later than the payday for the next regular payroll period after the leave was taken.

For each hour of 2021 SPSL, the employee must be paid the highest of the following:

- The employee’s regular hourly rate of pay for the workweek in which the leave is taken,
- A rate 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,

- The California minimum wage, or
- The local minimum wage.

2021 SPSL for exempt employees must be calculated in the same manner that the employer calculates wages for other forms of paid leave.

An employer is not required to pay more than \$511 per day, and \$5,110 in the aggregate, to an employee for 2021 SPSL; but the employee may utilize other available paid leave in order to receive what they would normally earn if the cap is reached.

Requesting and Granting Leave

An employee is entitled to take 2021 SPSL immediately upon the employee's oral or written request. The leave is not conditioned on medical certification.

Although an employer cannot deny 2021 SPSL solely for lack of a medical certification, it may be reasonable in certain circumstances to ask for documentation before paying 2021 SPSL when the employer has information indicating the employee is not requesting 2021 SPSL for a valid purpose.

Retroactive Leave

If the employee took leave between January 1, 2021 and March 28, 2021 for of a qualifying reason under SB 95 but was not paid, the employee has the right to ask the employer for a "retroactive" payment equal to the amount required. The employee can make such a request either orally or in writing.

After the employee makes the request, the employer will have until the payday for the next full pay period to pay the "retroactive" 2021 SPSL. On that payday, the employer must also provide accurate notice on the itemized wage statement of how many 2021 SPSL hours remain available to the employee.

Interaction with Other Leaves

Employers who already provide COVID-19 specific supplemental paid sick leave for leave taken after January 1, 2021 that is available for the same reasons and paid at the same rate may count those hours toward the 2021 SPSL obligation. For example, leave provided under local ordinances for reasons overlapping with SB 95 may run concurrently. An employer may not require that employees use other paid or unpaid leave before or in lieu of 2021 SPSL.

Additional Considerations

- **Recordkeeping and Paystubs:** Because 2021 SPSL is in addition to regular paid sick leave, employers should denote 2021 SPSL hours separately on the employee's itemized wage statement to ensure employees understand how many separate hours they have available for 2021 SPSL.
- **Notice:** Employers are required to display the attached poster that contains information about 2021 SPSL in a conspicuous place. If employees do not frequent a workplace, the employer may satisfy the notice requirement by emailing the poster.
- **Freedom from Discrimination/Retaliation for Exercising Rights:** Employees using or attempting to exercise their rights to 2021 SPSL are protected from discrimination and retaliation.