

Alert

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California's Large Employers to Provide COVID-19 Paid Sick Leave Following Newsom's Signature

On September 9, 2020, Governor Newsom signed Assembly Bill 1867, requiring large employers to provide COVID-19 related supplemental paid sick leave to their California employees. The bill, codified at Labor Code § 248.1, applies to private employers with more than 500 employees nationwide at the time the claim for leave is submitted. Prior iterations of supplemental paid leave laws passed in response to the COVID-19 pandemic had exempted large employers, but that exemption has now been closed, at least with respect to the employee's own COVID-19-related absences. The new law essentially extends the same or similar benefits to employees with respect to the employee's own COVID-19-related absences that the federal government mandated for smaller employers when it passed the Families First Coronavirus Response Act (FFCRA) in March, and that the state of California mandated for food sector workers earlier this year. In addition, the new law extends supplemental paid sick leave to health care employees and emergency responders who were not extended paid sick leave by their employers under the FFCRA, regardless of employer size. In another departure from the FFCRA, covered employees under the new law include only those persons who must leave their home or place of residence to perform work. Ostensibly, this exempts employees currently teleworking from the supplemental paid leave benefits. The new law will remain in effect until December 31, 2020, (the day the FFCRA is set to expire) or any extension of the FFCRA, whichever is later.

The new law requires that, beginning no later than September 19, 2020, covered employers provide up to 80 hours of supplemental paid sick leave to employees who are unable to work and need to take leave for the following reasons:

The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;

The employee is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or

The employee is prohibited from working due to health concerns related to the transmission of COVID-19.

Employees eligible for sick leave under this law are entitled to the highest of: 1) the employee's regular rate of pay for the last pay period, 2) the state minimum wage, or 3) the local minimum wage to which the employee is entitled. Similar to the FFCRA's Emergency Paid Sick Leave provisions, these amounts are capped at a maximum of \$511 per day and \$5,110 in the aggregate. However, unlike the FFCRA, employers will not be reimbursed through tax credits for payments made under AB 1867.

Employees who are considered full-time by their employers or who worked or were scheduled to work an average of at least 40 hours per week in the two weeks before the leave is taken are entitled to 80 hours of supplemental paid sick leave. Employees who work a part-time schedule are also eligible for paid sick leave. The amount of leave depends on the length of tenure of the part-time employee and on whether the employee works a fixed or variable schedule. Part-time employees who work a fixed schedule are entitled to sick leave equal to the total number of hours



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they are normally scheduled to work over a two week period. Part-time employees who work a variable schedule are entitled to up to 14 times the average number of hours they have worked each day for the employer in the preceding six months. Finally, part-time employees with a variable schedule who have 14 days or fewer of tenure are entitled to leave equal to the same number of hours the employee has actually worked for the employer.

Unlike the FFCRA's Emergency Paid Sick Leave provisions, the new law does not appear to extend paid sick leave benefits to employees who must care for an individual who has been ordered or advised to self-isolate due to COVID-19 or to employees who are caring for their child whose school or child care facility is closed or whose child care provider is unavailable due to a COVID-19 public health emergency. However, an employee who is advised to self-isolate due to possible exposure to COVID-19 as it relates to a family member or a person for whom the employee is providing care due to COVID-19, would be entitled to paid sick leave benefits under Labor Code § 248.1.

Paid sick leave provided pursuant to the California Healthy Workplaces, Healthy Families Act ("Healthy Workplaces Act") and/or normal local paid sick leave laws may not be counted against an employer's obligation to provide supplemental COVID-19 related paid leave pursuant to the new law. Employers, however, that are already required to provide supplemental COVID-19-related paid sick leave pursuant to the state's food sector mandate or any applicable local ordinances need not provide duplicative benefits to employees. If the paid leave provided pursuant to a local supplemental order results in the employee receiving a smaller benefit than the employee would receive under Labor Code § 248.1, the employer must make up the difference between the local law and the amount the employer would owe under the new law. Further, the law prohibits employers from requiring an employee to use any other paid (or unpaid) leave, paid time off, or vacation time available under the employer's policies before or in lieu of COVID-19 supplemental paid sick leave.

The new law incorporates certain provisions of the existing Healthy Workplaces Act, including its pay stub requirement (Labor Code 246(i)) and indicates that the pay stub requirement is effective on the first full pay period following enactment of the new law on September 9, 2020.

The Labor Commissioner has issued a new sick leave law poster for non-food sector businesses and also has revised its prior food sector workplace poster regarding supplemental paid leave benefits. Given the ongoing pandemic, the law provides that if covered workers do not frequent the workplace due to teleworking or other circumstances, employers may meet their "posting" requirements by disseminating the new leave law poster through electronic means, such as email. The new posters can be found [here](#) and [here](#) and the Department of Industrial Relations FAQ regarding the new law can be found [here](#).

AB 1867 is yet another installment in the growing number of new laws that have been passed at the federal, state, and local levels in response to the pandemic. To ensure compliance, employers should consult with legal counsel in interpreting and implementing these new requirements.
