

## e-Alert

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# California Employers to Provide COVID-19 Supplemental Paid Sick Leave (CSPL) Retroactive to January 1

## Background

California recently passed Senate Bill 95, which requires employers with more than 25 employees to provide COVID-19 supplemental paid sick leave to their employees, in addition to regular paid sick leave offered. **The leave requirement took effect March 29, 2021 but is retroactive to January 1, 2021.** The new leave requirement is **in addition to** other leave provided by the employer.

## Summary

### Retroactive Payments

The deadline for employers to start providing this leave is March 29, 2021. However, since the law applies retroactively to January 1, 2021, if an employee took qualifying leave from January 1, 2021, through March 28, 2021, and requests retroactive payment, the employer must provide it, as long as the alternative leave meets the requirements for leave under the new law. For instance, the credited leave must not consist of any other vacation, paid leave, or paid time off that is not specific to COVID-19.

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To receive credit for alternative COVID-19 leave that was provided between January 1 and March 28, 2021, but that was not compensated at the rate required by the new law, employers may make payments to employees retroactively to make up the difference. This “retroactive” payment is only required if the covered employee makes an oral or written request for the leave. After the employee makes the request, the employer must make the payment by the next payday. The law contains daily and total pay caps per employee.

### Qualifying Reason for Leave

Employees may take leave under the law if they cannot work or telework for any one of the following reasons:

- **Caring for Themselves.** They are subject to a COVID-19 quarantine or isolation order, or they have received a healthcare provider’s advice to quarantine due to COVID-19, or they are experiencing symptoms of COVID-19 while seeking a diagnosis;
- **Caring for a Family Member.** They are 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 they are caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises; or
- **Vaccine-related.** They are attending a vaccine appointment or are experiencing vaccine-related symptoms.

Under the law, a family member includes a spouse; registered domestic partner; parent, including parent of a spouse or domestic partner; grandparent; child, regardless of their age or dependency; grandchild; and sibling.

### Eligible Employees

A full-time employee (or someone who has worked on average 40+ hours per week in the two weeks before leave is taken) is entitled to 80 hours of CSPSL.

An employee who doesn't meet either of the above criteria is entitled to the leave as follows:

- If they work a normal weekly schedule, they're entitled to the total number of hours they are normally scheduled to work over two weeks.
- If they work a variable number of hours, they are entitled to 14 times the average number of hours they worked each day in the six months preceding the date they took COVID-19 supplemental paid sick leave.

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The COVID-19 supplemental paid sick leave is in addition to any leave to which the employee is entitled under the state's paid sick leave law, [Labor Code Section 246](#).

The employer must make COVID-19 supplemental paid sick leave available for employees to use as soon as possible. Employees are entitled to use their full amount of leave if they start the leave on or before September 30, 2021.

### Pay During Leave

For each hour of COVID-19 supplemental paid sick leave, the leave must be compensated at:

- For **nonexempt employees**, by the highest of the following:
  - The employee's regular rate of pay for the workweek in which they used COVID-19 supplemental paid sick leave;
  - The employee's total wages, not including overtime premium pay, divided by their total hours worked in the full pay periods of the prior 90 days of employment;
  - The state minimum wage;
  - The local minimum wage
- For **exempt employees**, the employer must calculate the leave the same way they calculate wages for other forms of paid leave.

### The cap for COVID-19 supplemental paid sick leave is the following:

The maximum benefit is \$511 per day or \$5,110 in the aggregate. Employees who earn more than the maximum benefits may use other available paid leave to fully compensate them for their time away from work.

### Wage Statements

The state's existing paid sick leave law requires employers to provide the employee with written notice of the amount of paid sick leave available for them to use on either an itemized wage statement or in a separate statement provided on the designated pay date. COVID-19 supplemental paid sick leave must be itemized separately from the paid sick leave, according to Senate Bill 95. Employers will have until the next full pay period after March 29, 2021, to comply with this requirement.

### Notice

Under the law, employers must post a notice about the employees' rights. The Labor Commissioner published a [model notice](#) for employers. An employer must satisfy the requirement for employees who do not frequent the workplace, an employer must

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distribute the notice through electronic means.

### **Interaction with Other Paid Sick Leave Laws**

Employers can count the COVID-19 related supplemental paid sick leave provided pursuant to a local paid sick leave ordinance toward this 2021 CSPSL obligation so long as the leave provided is for a reason listed under the 2021 COVID-19 Supplemental Paid Sick Leave law and is at least at the same rate of pay as this law requires.

Usually, an employer cannot require an employee to use other paid or unpaid leave prior to or in place of using COVID-19 supplemental paid sick leave. However, an employer may require an employee to exhaust their COVID-19 supplemental paid sick leave before taking COVID-19 leave if they have been excluded from the workplace due to COVID-19 exposure under emergency state rules.

### **Special Rules**

Under the law, [special rules](#) apply for in-home supportive service providers and firefighters.

## **Employer Next Steps**

- HRK will continue to monitor COVID-19-related leave laws.
- The California Department of Industrial Relations has published [FAQs](#) and a mandatory workplace [notice](#) on the new law.
- If you are a Full-Service or Virtual HR client and have questions about this e-Alert, please [email us](#).

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