

Five FAQs: Paid Sick Leave for COVID-19- Qualifying Reasons Available to All California Employees Under New Law

by Gabrielle Wirth, Nisha Verma, Pavlina Kochankovska Rafter, and Erica Haggerty Chen

On September 9, 2020, Governor Gavin Newsom signed AB 1867, which supplements both the federal Families First Coronavirus Response Act and California Executive Order N-51-20, with the result of providing some form of paid sick leave to all California workers who work outside of the home.

What groups of employees are affected?

The stated intent of the law is to fill the gaps in coverage left by the FFCRA, which only applies to employers with less than 500 employees, creating a system whereby all California workers are entitled to paid-sick leave for COVID-19 qualifying reasons.

The bill provides paid sick leave to the following groups of employees who would not otherwise be covered by the FFCRA: (1) employees working in the “food sector” who were previously entitled to paid sick leave under Executive Order N-51-20; (2) employees working for private employers with 500 or more employees; and (3) employees working for private or public employers subject to the FFCRA, where the employers elected to exclude health care provider or emergency responder employees from the FFCRA's emergency paid sick leave requirements.

What circumstances trigger the obligation to provide leave?

The obligation to provide paid sick leave only arises where the employee cannot work because he or she is:

- (1) subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (2) advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; and/or
- (3) prohibited from working by the hiring entity due to health concerns related to the potential transmission of COVID-19.

The above provisions likely capture all instances where an employee has tested positive

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for COVID-19, and where an employee has been exposed to COVID-19. Some may argue that the third provision could also be interpreted to capture instances where an employer closes its facility due to an outbreak of COVID-19 in the workplace.

How much leave must be provided?

The statute is set up so that employees are able to receive the equivalent of two workweeks of leave due to the COVID-19 qualifying reason. Most employees who typically work full-time can expect to receive about 80 hours of leave. Part-time employees with a normal weekly schedule can expect to receive the total number of hours they are typically scheduled to work in a two week period. Employees whose hours vary from week to week will receive paid leave based on a calculation that looks at the average number of hours worked per day in the previous six months.

The maximum amount the employer is required to pay mirrors the FFCRA: \$511 per day, with a cap of \$5,110.

How does this law interact with paid sick leave the employer already provides?

Generally speaking, employers must provide the leave required by this statute in addition to any vacation, paid time off, or sick leave that is otherwise available, including leave provided pursuant to California's preexisting paid sick leave law (Healthy Workplace Healthy Family Act of 2014). Additionally, employers cannot require that the employee use those other forms of paid leave prior to receiving paid leave under this new law. However, if an employer has created a supplemental leave plan specifically for COVID-19 qualifying reasons, they may count the hours of leave provided under that plan as meeting the requirements under the new law.

When does the obligation to provide leave begin, and when does it end?

The continuation of paid sick leave for food sector workers took place immediately. The expansions applicable to other employees will take place no later than September 19, 2020. The law requires that the Labor Commissioner issue a model notice that employers must post or disseminate to their employees. The bill's requirements will expire on December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the FFCRA, whichever is later.