

HILL, FARRER & BURRILL LLP
Labor & Employment Update

California Legislation SB 95 Expands COVID-19 Supplemental Paid Sick Leave

On March 20, 2021, Governor Newsom signed SB 95, which requires California employers to provide mandatory supplemental paid sick leave for reasons related to COVID-19. The law takes effect March 29, 2021, applies retroactively back to January 1, 2021, and expires on September 30, 2021.

The new law provides paid leave to employees who took leave after the December 31, 2020 expiration of the 2020 supplemental paid sick leave law, AB 1867, and the Families First Coronavirus Response Act (FFCRA), or who will take such leave prior to September 30, 2021, and also expands eligibility for leave.

Applicable to Employers with 26 or More Employees

SB 95 applies to employers with 26 or more employees. All employees working for covered employers are eligible regardless of their length of service.

Reasons Employees Can Use Leave

“Covered employees” are those who are “unable to work or telework” for one of the following reasons:

- The employee is subject to a quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is attending an appointment to receive a COVID-19 vaccine.
- The employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.
- The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
- The employee is caring for a family member who must or has been advised to self-quarantine or isolate. (“Family member” includes a child, grandchild, grandparent, parent, sibling or spouse).
- The 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 Leave and Rate of Pay

Full time employees are entitled to 80 hours of COVID-19 supplemental paid sick leave, while part-time employees are entitled to an amount of leave correlating with the number of hours the employee regularly works during a 2-week period. SB 95 calculates the amount of pay at the employee's "regular rate," but it does not require an employer to pay out more than \$511 per day or \$5,110 in the aggregate to an employee in supplemental paid sick leave benefits for 2021. This is in addition to any paid leave already provided to the employee in 2020 under AB 1867 or the FFCRA.

Possible Offset

Unlike the FFCRA, this law does not offer tax relief for the paid leave required under this law. However, an employer covered by the FFCRA may be able to obtain tax credits for benefits provided under SB 95 for leave provided to employees that did not take FFCRA leave in 2020.

Employers who pay an employee another benefit for leave taken on or after January 1, 2021 that is payable for the law's covered reasons and compensates employees in an amount equal to or greater than the amount of pay required by SB 95 may count those hours towards the number of hours they must provide an employee under the new law. However, employers cannot count paid sick leave employees used under California's paid sick leave law (Healthy Workplaces, Healthy Families Act of 2014) or 2020 COVID-related leave laws toward the 80 hours of leave required under this new law.

SB 95 addresses how it interacts with Cal-OSHA COVID-19 standards, which require an employer to maintain an employee's earnings when an employee is excluded from the workplace due to COVID-19 exposure. An employer can require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under SB 95 to satisfy "continued earnings" under Cal-OSHA's requirements.

Retroactivity

An employer may be required to make a retroactive payment that provides for compensation to the employee if leave was taken from January 1, 2021 through March 29, 2021 (the law's effective date) and the covered employee was not compensated for COVID-19 related sick leave, or the compensation was not equal to or greater than the paid leave required under SB 95. The covered employee may request, either orally or in writing, retroactive payment that provides such compensation. Payment must be made on or before the payday for the *next* full pay period after the request. When providing retroactive payment, the number of hours of leave used for retroactive

payment counts towards the total number of hours of COVID-19 supplemental paid-sick leave that the employer is required to provide to the covered employee.

Notice Requirements

Employers must give notice of employees' rights to supplemental paid-sick leave. The Labor Commissioner has drafted a model notice that can be found at <https://www.dir.ca.gov/dlse/2021-COVID-19-Supplemental-Paid-Sick-Leave.pdf>. Employers can provide electronic notice to employees who do not regularly work in-person at the workplace. COVID-19 supplemental paid-sick leave must also be identified separately from regular paid-sick days on itemized wages statements.

Expiration

The new law will expire on September 30, 2021. However, an employee taking leave at the time the law expires will be permitted to take their full amount of leave.

Call Hill Farrer for Further Questions

Please contact your Hill Farrer attorney or any member of our Labor and Employment department for additional information and assistance with complying with this new law.