



## Department of Industrial Relations

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# 2021 COVID-19 Supplemental Paid Sick Leave FAQs

### *(Labor Code Section 248.2)*

#### Coverage

##### 1. Which employers are covered by the new 2021 COVID-19 Supplemental Paid Sick Leave law?

All employers, public or private, with more than 25 employees are covered, including those with collective bargaining agreements.

##### 2. Which employees are covered by this new law?

Covered employees are those who cannot work or telework due to the reasons listed below in FAQ 4. Under the 2021 COVID-19 Supplemental Paid Sick Leave law, covered employees are entitled to paid sick leave that is **in addition to** leave that was provided under previous laws which expired on December 31, 2020. See FAQ 25 for more information on these other laws (the federal Families First Coronavirus Response Act and the 2020 COVID-19 Supplemental Paid Sick Leave laws).

##### 3. Does COVID-19 Supplemental Paid Sick Leave apply to independent contractors?

No. Unlike 2020 COVID-19 Supplemental Paid Sick Leave for food sector workers (Labor Code Section 248), 2021 COVID-19 Supplemental Paid Sick Leave does not apply to independent contractors. However, any worker who has been [misclassified as an independent contractor](#) but is in fact an employee, and otherwise qualifies under the new law, is entitled to 2021 COVID-19 Supplemental Paid Sick Leave.

#### Reasons for Taking Leave

##### 4. What are the circumstances that allow a covered employee to take 2021 COVID-19 Supplemental Paid Sick Leave?

The covered employee must be unable to work or telework due to any one of the following reasons:

- **Caring for Yourself:** The covered employee is subject to a quarantine or isolation period related to COVID-19 (see note below), or has been advised by a healthcare provider to quarantine due to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- **Caring for a Family Member:** The covered employee is caring for a family member who is either subject to a quarantine or isolation period related to COVID-19 (see note below) or has been advised by a

healthcare provider to quarantine due to COVID-19, or the employee is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.

- **Vaccine-Related:** The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

**NOTE:** The quarantine or isolation period related to COVID-19 is the period defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace.

#### **5. Is a covered employee eligible for 2021 COVID-19 Supplemental Paid Sick Leave if someone with whom the covered employee lives is exposed, experiences symptoms, or is diagnosed with COVID-19?**

A covered employee is eligible for COVID-19 Supplemental Paid Sick Leave if the employee is caring for a family member whom a medical professional has recommended to stay home due to COVID-19, or caring for a family member who is subject to a COVID-19 related quarantine or isolation period as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the family member's workplace.

#### **6. Does being subject to a general stay-at-home order mean that a covered employee is "subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace"?**

No. The order or guidelines must be specific to the covered employee's circumstances. A general stay-at-home order would not count. For example, guidelines or an order of a local health officer that directs individuals who live with someone who has COVID-19 to quarantine themselves would satisfy the eligibility requirement for taking 2021 COVID-19 Supplemental Paid Sick Leave.

## **Start Date and End Date**

#### **7. What time period does 2021 COVID-19 Supplemental Paid Sick Leave Cover?**

January 1, 2021 through September 30, 2021. Although the law was signed on March 19, 2021, the requirement for an employer to provide 2021 COVID-19 Supplemental Paid Sick Leave does not start until March 29, 2021. Beginning on March 29, the requirement to provide 2021 COVID-19 Supplemental Paid Sick Leave goes back to January 1, 2021, which means that covered employees who took **qualifying leave between January 1, 2021 and March 28, 2021**, can request payment for that leave if it was not paid by the employer in the amount that is required under this law.

- FAQ 10 below describes how a covered employee may request this "retroactive" payment.
- FAQs 12-15 below describe how many hours of 2021 COVID-19 Supplemental Paid Sick Leave that covered employees can take, and how much they must be paid for taking this leave.

The requirement to provide 2021 COVID-19 Supplemental Paid Sick Leave will end on September 30, 2021. If the law expires while a covered employee is taking this leave, the employee can finish taking the amount of 2021 COVID-19 Supplemental Paid Sick Leave they are entitled to receive.

#### **8. When must an employer begin paying COVID-19 Supplemental Paid Sick Leave to covered employees?**

Employers have a 10-day grace period after the signing of the law to begin providing 2021 COVID-19 Supplemental Paid Sick Leave. This means that employers are required to provide this leave beginning on March 29, 2021.

Starting on March 29 when employers must begin providing 2021 COVID-19 Supplemental Paid Sick Leave, the requirement to provide this leave goes back to January 1, 2021. This means that covered employees who took **qualifying leave between January 1, 2021 and March 28, 2021**, can request payment for that leave if it was not paid by the employer in the amount that is required under this law.

- FAQ 10 below describes when an employer must provide this “retroactive” payment.
- FAQs 12-15 below describe how many hours of 2021 COVID-19 Supplemental Paid Sick Leave that a covered employee can take, and how much an employer must pay the employee for taking this leave.

For 2021 COVID-19 Supplemental Paid Sick Leave taken by a covered employee **on or after March 29, 2021**, the employer must provide payment no later than the payday for the next regular payroll period after the sick leave was taken.

## Requesting Leave from An Employer

### **9. When does an employer have to make the 2021 COVID-19 Supplemental Paid Sick Leave available to a covered employee?**

Immediately upon the oral or written request of the covered employee to the employer.

### **10. How does a covered employee request “retroactive” 2021 COVID-19 Supplemental Paid Sick Leave for leave taken between January 1, 2021 and March 28, 2021?**

If the covered employee took leave between January 1, 2021 and March 28, 2021, for one of the qualifying reasons under this new law (see FAQ 4), but was not paid for this leave in the amount required under this law (see FAQs 12-15), then the covered employee has the right to ask the employer for a “retroactive” payment equal to the amount required.

The requirement to provide “retroactive” 2021 COVID-19 Supplemental Paid Sick Leave does not start until March 29, 2021. This “retroactive” payment is only required if the covered employee makes an oral or written request to be paid for leave that qualifies (as described above).

For example, if a covered employee had to take two hours off for a vaccine appointment on February 15, 2021, the employee can make an oral or written request to the employer to be paid for that time off in February, since it is a qualifying reason for taking 2021 COVID-19 Supplemental Paid Sick Leave. The oral or written request must be made on or after March 29, 2021. A request made before March 29 does not count. If an employee is unable to make the request themselves or has difficulty locating an employer to provide proper notice, they may contact the Labor Commissioner’s Office, which may be able to provide assistance.

After the employee makes the request, the employer will have until the payday for the next full pay period to pay the “retroactive” 2021 COVID-19 Supplemental Paid Sick Leave. On that payday, the employer must also provide accurate notice on the itemized wage statement of how many 2021 COVID-19 Supplemental Paid Sick leave hours remain available to the covered employee.

### **11. In the absence of any information that a covered employee is not requesting 2021 COVID-19 Supplemental Paid Sick Leave for a valid purpose, can an employer require certification from a health care**

## **provider before allowing a covered employee to take the leave?**

No. An employer may not deny a worker 2021 COVID-19 Supplemental Paid Sick Leave based solely on a lack of certification from a health care provider. A covered employee is entitled to take 2021 COVID-19 Supplemental Paid Sick Leave immediately upon the covered employee's oral or written request. The leave is not conditioned on medical certification.

Although an employer cannot deny 2021 COVID-19 Supplemental Paid Sick Leave solely for lack of a medical certification, it may be reasonable in certain circumstances to ask for documentation before paying the sick leave when the employer has other information indicating that the covered employee is not requesting 2021 COVID-19 Supplemental Paid Sick leave for a valid purpose. In any such claim, the reasonableness of the parties' actions will undoubtedly come into play.

For example, if a covered employee informs an employer that the covered employee is subject to a local quarantine order or recommendation, has to stay home, and qualifies for 2021 COVID-19 supplemental paid sick leave, but the employer subsequently learns that the covered employee was out at a park, the employer could reasonably request documentation.

## **Calculating Leave**

### **12. How much 2021 COVID-19 Supplemental Paid Sick Leave is a full-time covered employee entitled to receive?**

A covered employee who is considered full-time or who worked or was scheduled to work an average of at least 40 hours per week in the two weeks before the leave is taken is entitled to 80 hours of COVID-19 Supplemental Paid Sick Leave.

### **13. If I am an active firefighter, am I limited to 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave?**

No. Under this law, active firefighters who were scheduled to work more than 80 hours in the two weeks before the leave is taken, can take as many hours as they were scheduled, but the law limits the amount paid to the maximum of \$511 per day or \$5,110 in total.

### **14. How do you calculate the leave entitlement for a part-time covered employee who does not have a set schedule?**

Below are the two methods to calculate the entitlement for part-time covered employees.

- **Part-Time Covered Employees with Variable Schedules Who Have Worked For an Employer Over a Period of More Than 14 Days.**

For such a part-time covered employee who works variable hours, the covered employee may take fourteen times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took 2021 COVID-19 Supplemental Paid Sick Leave. If the part-time covered employee has worked for the employer for fewer than six months, this calculation would be done over the entire period that the covered employee has worked for the employer. If the variable schedule calculation results in an average work schedule of at least 40 hours per week, the variable-scheduled covered employee would be considered full time and entitled to 80 hours of leave because the laws require the employer to pay 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave to a covered employee it properly considers full time, but does not require payment for

more than 80 hours.

In calculating the average number of hours worked by a part-time covered employee with a variable schedule over the past six months, 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):

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

- **Part-Time Covered Employees with Variable Schedules Who Have Worked For an Employer for a Period of 14 Days or Fewer.**

A covered employee who is newly hired (*i.e.*, hired 14 days or less) and works variable hours will be entitled to the number of 2021 COVID-19 Supplemental Paid Sick Leave hours that they have worked in the preceding two weeks.

Below is an example of the calculation where such a new covered employee has worked for a total of two days—one day for 1 hour and a second day for 6 hours over the past two weeks:

<b>Total Number of Hours Worked During the Two-Week Period</b>	7 hours
<b>Total Number of Days in a Two-Week Period</b>	14 days
<b>Average Number of Hours Worked Each Day in the Two-Week Period</b>	7 hours ÷ 14 days = .5 hours
<b>2021 COVID-19 Supplemental Paid Sick Leave Entitlement</b>	.5 hours x 14 = 7 hours

### 15. How much must a covered employee be paid for 2021 COVID-19 Supplemental Paid Sick Leave that the employee is entitled to receive?

For each hour of 2021 COVID-19 Supplemental Paid Sick Leave that a non-exempt covered employee is entitled to receive, the employee must be paid the highest of the following:

- The employee's regular 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 State minimum wage
- The local minimum wage

2021 COVID-19 Supplemental Paid Sick Leave for exempt covered employees must be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

An employer is not required to pay more than \$511 per day and \$5,110 in the aggregate to a covered employee for 2021 COVID-19 Supplemental Paid Sick Leave taken by the covered employee, but the covered employee may utilize other paid leave that may be available in order to receive what they would normally earn if the cap is reached.

## Credits

**16. If an employer makes a “retroactive” payment as requested by the covered employee (see FAQ 10) on or after March 29, 2021 to a covered employee for leave taken before the date the 2021 COVID-19 Supplemental Paid Sick Leave law becomes effective, then does the employer receive any credit towards the requirement to provide 2021 COVID-19 Supplemental Paid Sick Leave?**

Yes, the number of hours of leave corresponding to the amount of the retroactive payment counts toward the total number of hours of 2021 COVID-19 Supplemental Paid Sick Leave that the employer is required to provide to the covered employee (see FAQs 12-14), under the following circumstances:

- The retroactive payment is for leave taken by the covered employee between January 1, 2021 and March 28, 2021
- The leave taken by the covered employee was for one of the qualifying reasons under the 2021 COVID-19 Supplemental Paid Sick Leave law (see FAQ 4), and
- The retroactive payment by the employer pays the covered employee the amount required under the 2021 COVID-19 Supplemental Paid Sick Leave law (see FAQs 12-15).

**17. If an employer voluntarily pays another supplemental benefit for COVID-19 related sick leave, including for leave that was taken before the 2021 COVID-19 Supplemental Paid Sick Leave law became effective, then may the employer receive a credit toward the requirements in the new 2021 COVID-19 Supplemental Paid Sick Leave law?**

Yes, as long as the payment meets the requirements in the law. For example, an employer may have already voluntarily provided a covered employee with other COVID-19 related paid sick leave between January 1, 2021, and March 28, 2021. For an employer to receive a credit for those sick leave hours that the employer voluntarily paid, the following must apply:

- The leave taken by the covered employee and paid by the employer must have been for one of the qualifying reasons under the 2021 COVID-19 Supplemental Paid Sick Leave Law (see FAQ 4);
- To pay for this other supplemental benefit, the employer did not require the covered employee to use any other paid leave or paid time off available to the employee under a policy that is not specific to COVID-19, or vacation time; and
- The employer paid for the leave taken at a rate equal to or greater than what is required under the 2021 COVID-19 Supplemental Paid Sick Leave law (see FAQs 12-15).

- If the employer paid for the leave taken at a lesser rate than what is required under the 2021 COVID-19 Supplemental Paid Sick Leave law, then the employer may voluntarily make a retroactive payment to make up the difference between what was paid and what is required under the 2021 COVID-19 Supplemental Paid Sick Leave law, or must make the payment if a covered employee makes a written or oral request for it on or after March 29, 2021. If the employer chooses to voluntarily make a retroactive payment, the employer must make the decision whether or not to seek the credit and make payment to the worker on the pay day for the first full pay period after March 29, 2021. This is because the employer must provide accurate notice on the itemized wage statement or separate writing of how many 2021 COVID-19 Supplemental Paid Sick leave hours remain available to the worker on the pay day for the first full pay period after March 29, 2021. The employer therefore must pay to the worker the shortfall between what was paid and what is required by the California 2021 COVID-19 Supplemental Paid Sick Leave law by that pay day. If an employee requests the retroactive pay differential, the retroactive payment must then be made by the payday for the next full pay period after the employee makes the request.

#### **18. Can an employer count the COVID-19-related supplemental paid sick leave provided pursuant to a local paid sick leave ordinance toward 2021 COVID-19 Supplemental Paid Sick Leave under California law?**

Yes. For example, if an employer provides a full-time covered employee 40 hours of COVID-19-related supplemental paid sick leave pursuant to a local ordinance, those 40 hours would count toward the employer's obligations under the 2021 COVID-19 Supplemental Paid Sick Leave law, 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.

#### **19. If a local law requires COVID-19 supplemental paid sick leave to be paid at a rate different from that required under California law, which rate must an employer use?**

California law sets minimum requirements for 2021 COVID-19 Supplemental Paid Sick Leave and does not override local requirements for such leave. Thus, if an employer must provide COVID-19-related supplemental paid sick leave pursuant to a local law (and intends for that sick leave to count toward the requirements of California law), the employer must provide leave at a rate of pay that would ensure compliance with both the local law and California law, which would be the higher of the rates required. If an employer is uncertain as to how to calculate pay under a local ordinance, the employer should contact the relevant local jurisdiction for guidance.

## **Record-keeping and Paystubs**

#### **20. Should 2021 COVID-19 Supplemental Paid Sick Leave be listed separately from regular Paid Sick Leave on the itemized paystub or separate writing at the time wages are paid?**

Yes. The 2021 COVID-19 Supplemental Paid Sick Leave law is clear that the obligation to provide COVID-19 Supplemental Paid Sick Leave is in addition to regular paid sick leave. The itemized wage statement or separate writing requirement ensures covered employees understand how many separate hours they have available for 2021 COVID-specific sick leave. For example, consider a full-time covered employee who has used all of the covered employee's regular paid sick leave but is entitled to 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave. If an itemized wage statement specifies that there are 0 hours of paid sick leave and 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave available, the covered employee would be on notice that they

lack available paid sick leave for non-COVID-related absences. On the other hand, if the itemized wage statement simply said 80 hours of paid sick leave available without differentiating between paid sick leave and 2021 COVID-19 Supplemental Paid Sick Leave, a covered employee might take paid sick leave for non-COVID related reasons without realizing that there were no sick leave hours available.

In addition, Labor Code Section 247.5 requires that records be kept for a three-year period on regular paid sick days and 2021 COVID-19 Supplemental Paid Sick days accrued and used, and that the records be made available to the Labor Commissioner or employee upon request.

### **21. How should an employer calculate and list 2021 COVID-19 Supplemental Paid Sick Leave on paystubs for part-time variable scheduled covered employees?**

An employer with variable-scheduled part-time covered employees will have to calculate the amount of COVID-19 Supplemental Paid Sick Leave available based on when a covered employee requests it. The employer gets a credit for any 2021 COVID-19 Supplemental Paid Sick Leave that was already provided; if a covered employee is owed additional hours of 2021 COVID-19 Supplemental Paid Sick Leave under a new schedule, the covered employee therefore only receives the balance between what was available under the original schedule and any additional 2021 COVID-19 Supplemental Paid Sick Leave hours under the new schedule.

For the itemized wage statement or separate writing requirement, employers who have a variable-scheduled covered employee would be required to calculate the initial amount of 2021 COVID-19 Supplemental Paid Sick Leave available and put (variable) next to it on the itemized wage statement or separate writing.

## **Enforcement**

### **22. What notice must employers provide to covered employees about 2021 COVID-19 Supplemental Paid Sick Leave under California law?**

Under California law, employers are required to display the [required poster](#) in a conspicuous place that contains information about 2021 COVID-19 Supplemental Paid Sick Leave.

If an employer's covered employees do not frequent a workplace, the employer may satisfy the notice requirement by disseminating notice through electronic means.

### **23. Where can a covered employee file a claim if the covered employee was not allowed to use or was not paid for 2021 COVID-19 Supplemental Paid Sick Leave?**

The covered employee may [file a claim](#) or a [report of a labor law violation](#) with the Labor Commissioner's Office, the state agency charged with enforcement.

### **24. What rights does a covered employee have if the covered employee suffers retaliation, like getting fired, for using paid sick leave under local, state or federal law?**

Covered employees using or attempting to exercise their rights to 2021 COVID-19 Supplemental Paid Sick Leave, including both the right to paid leave and other rights such as timely payment and written notice of available leave, are protected from retaliation under Labor Code section 246.5(c). In addition, other labor laws enforced by the Labor Commissioner may protect covered employees from retaliation in this situation. Covered employees should seek assistance from the Labor Commissioner's Office if they have questions about retaliation or want to file a retaliation complaint.



## Relation to Other Laws

### **25. Is 2021 COVID-19 Supplemental Paid Sick Leave different than the COVID-related paid sick leave that employers provided under the federal Families First Coronavirus Response Act (FFCRA) or the California COVID-19 Supplemental Paid Sick Leave laws in 2020?**

Yes. Both the FFCRA emergency paid sick leave and the 2020 California Supplemental Paid Sick Leave laws expired on December 31, 2020. The new 2021 COVID-19 Supplemental Paid Sick Leave law allows covered employees to take up to an additional 80 hours of COVID-19 related sick leave.

For more information on the 2020 California Paid Sick Leave laws, which generally required COVID-19 related Supplemental Paid Sick Leave for employers with 500 or more employees and healthcare and emergency responder employees excluded from the FFCRA, please view our [FAQs on paid sick leave](#). Additional information on the [FFCRA emergency paid sick leave law](#), which generally required COVID-19 related paid leave for employers with less than 500 employees and public employers, is posted on the federal Department of Labor FAQs.

**Federal law currently provides tax credits** for employers with less than 500 employees who provide COVID-19 related paid sick leave voluntarily. More information on the tax credits is available on the [Internal Revenue Service FAQs](#).

### **26. Can an employer require that an employee use 2021 COVID-19 Supplemental Paid Sick Leave when they have excluded an employee for workplace exposure to COVID-19?**

Yes. When an employee is excluded by their employer and entitled to exclusion pay (Exclusion Pay FAQ link), an employer may require the use of 2021 COVID-19 Supplemental Paid Sick Leave before providing exclusion pay.

### **27. Can an employer use state disability insurance (SDI) to meet its obligation to provide COVID-19 Supplemental Paid Sick Leave?**

No. Employers subject to the COVID-19 Supplemental Paid Sick Leave under California law cannot require covered employees to use SDI before or in lieu of 2021 COVID-19 Supplemental Paid Sick Leave.

A covered employee may apply, however, for SDI after taking the 2021 COVID-19 Supplemental Paid Sick Leave to which the covered employee is entitled. The Employment Development Department (EDD) administers SDI, which provides benefits that are approximately 60-70 percent of wages for eligible employees who are unable to work because they are sick or subject to an isolation or quarantine order or guideline. [More information on SDI](#) is posted on EDD's website.

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