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## EMPLOYMENT LAW ALERT

### New California Supplemental Paid Sick Leave Act – Senate Bill 95

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On Friday, March 19, 2021, Governor Newsom signed Senate Bill 95 into law reviving and expanding COVID-19 supplemental paid sick leave. In September 2020, California enacted state-wide COVID-19 supplemental paid sick leave in order to bridge the gaps created by the Families First Coronavirus Response Act (“FFCRA”). The California Supplemental Paid Sick Leave Act (“CA-SPSL”), as it was referenced, went into effect immediately, but expired on December 31, 2020.

Senate Bill 95, which is effective ten (10) days after enacted, i.e., March 29, 2021, applies retroactively to January 1, 2021. It takes the old CA-SPSL, which required most employers with over 500 employees to provide up to 80 hours of paid leave for three (3) COVID related reasons if the employee had to leave their home to perform work, and gives it new life. Under CA-SPSL the covered reasons for leave were: (1) when an employee was subject to an isolation or quarantine order, (2) when a healthcare provider recommended that the employee isolate or quarantine, or (3) when the company prevented an employee from working due to Covid-19 transmission related concerns,

Senate Bill 95, which is codified in Labor Code section 248.2 and Labor Code section 248.3 [\[1\]](#) (“New CA-SPSL”), will now apply to California employers with more than 25 employees. This, of course, makes New CA-SPSL applicable to numerous private employers that were not required previously to participate in CA-SPSL.

The new bill also provides for additional reasons for leave. Not only does it expand the covered reasons for leave, it is no longer limited to employees that cannot work, but applies to employees that are unable to telework for any of the covered reasons as well. New CA-SPSL provides that paid leave should be provided when an employee cannot work or telework because the employee:

- is subject to a quarantine or isolation period related to Covid-19 as defined by an order or guidelines of the State Department of Public Health, the CDC, or a local health officer with jurisdiction over the workplace,
- has been advised by a health care provider to self-quarantine due to concerns related to Covid-19,
- is attending an appointment to receive a vaccine for protection against contracting Covid-19,
- is experiencing symptoms related to a Covid-19 vaccine that prevent the employee from being able to work or telework,
- is experiencing symptoms of Covid-19 and seeking a medical diagnosis,
- is caring for a family member who is subject to a quarantine or isolation order or guidelines, or who has been advised to self-quarantine by a health care provider, or
- is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to Covid-19.

Also, because New CA-SPSL will apply retroactively, employers will be required to issue retroactive payments to employees who took leave for a covered reason prior to enactment. For example, if an employee took leave due to symptoms related to receiving the vaccine, the employee would be eligible for retroactive payment of New CA-SPSL leave. If the employee took vacation or existing sick leave for the vaccine related leave, the employer would be required to adjust the employee’s entitlement bank and apply the proper COVID related supplemental paid sick leave.

Full-time employees, as was the case under the original CA-SPSL, are entitled to an allotment of 80 hours of New CA-SPSL for 2021. Part-time employees who work normal schedules are entitled to the total number of hours they are typically scheduled to work in a two-(2)-week period.

Pay for New CA-SPSL leave would more closely resemble federal law (i.e., the FFCRA), and

provide that nonexempt employees must be paid at the highest of (1) their regular rate during the workweek in which they take the leave, (2) the total wages (not including overtime) divided by the total hours worked in the past 90 days of employment, or (3) the state or local minimum wage. Exempt employees should be paid through the same method they are normally paid leave. Both exempt and non-exempt employees are subject daily and aggregate caps for New CA-SPSL wages, i.e., \$511 daily and \$5,110 weekly. This mirrors the federal cap set forth in the FFCRA.

The Labor Commissioner is set to publish notice of the new law for employers to post or provide to employees. Additionally, employers will be required to provide their employees with their available leave balance under New CA-SPSL on employee wage statements or in a separate writing.

Like the old version of CA-SPSL, leave under New CA-SPSL will be in addition to paid sick leave already available to employees and employers cannot require employees use other paid or unpaid time off before using New CA-SPSL. Importantly, however, employers may require an employee to exhaust New CA-SPSL leave before the employer will be required to pay out earning continuation under the Cal/OSHA Emergency Temporary Standard for absences related to Covid-19 exposure or illnesses in the workplace.

Similar to the original CA-SPSL, employers may offset any New CA-SPSL leave with COVID-related paid leave provided under federal or local law, such as the FFCRA or county ordinances.

Due to the interplay between federal, state and local COVID related leave laws, whether or not an employer has an employee that is entitled to leave or retroactive pay for leave under the New CA-SPSL is a complicated analysis.

If you need assistance, please contact us or your designated employment counsel.

[\[1\]](#) Labor Code 248.3 in the codification of Senate Bill 95 which provides similar requirements for in-home care providers.



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