



Featured News

EMPLOYMENT ALERT

New COVID-19 Supplemental Paid Sick Leave

As expected, on February 9, 2022, California Governor Gavin Newsom signed into law legislation reviving COVID-19 supplemental paid sick leave (“SPSL”) under a new California Labor Code Section 248.6 (the “new SPSL”). Under the new SPSL, employers with greater than 25 employees are required to provide their employees with up to 80 hours of SPSL for specific COVID-19 related reasons. Unlike prior COVID-19 supplemental paid sick leave, the new SPSL has divided the 80 hours of SPSL into two (2) separate buckets.

New SPSL requires an employer to provide an employee with up to 40 hours of new SPSL if the employee is unable to work or telework due to any of the following:

- the employee is under a COVID-19 quarantine or isolation period based on a governmental order or guidelines;
- the employee has been advised by a health care provider to isolate or quarantine due to COVID-19;
- the employee is attending an appointment for themselves or a family member for a COVID-19 vaccine or booster;
- the employee is experiencing COVID-19 vaccine side effects or is caring for a family member who is experiencing side effects that prevent the employee from being able to work or telework;
- the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- the employee is caring for a family member who is subject to an order or guidelines described in subparagraph (1) or who has been advised to self-quarantine, as described in subparagraph (2); or
- 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.

For leave related to vaccination or a vaccine booster, an employer may limit the total new SPSL to 3 days or 24 hours, unless the employee provides verification from a healthcare provider that the employee or their family member is continuing to experience symptoms related to a COVID-19 vaccine or vaccine booster.

Additionally, employers with more than 25 employees are required to provide up to an additional 40 hours of new SPSL if the employee or the employee’s family member for whom the employee is providing care for, tests positive for COVID-19. Employees are not required to exhaust new SPSL



under the first bucket of 40 hours of leave, i.e., leave unrelated to a positive COVID-19 test (the “first bucket”), before utilizing the second 40 hours of leave for leave required for a positive COVID-19 test (the “second bucket”).

When an employee is requesting leave from the second bucket of 40 hours, an employer may require the employees to provide documentation of test results. Employers are not permitted to require documentation for leave requests that fall into the first bucket. Additionally, an employer may require an employee to subject to a diagnostic test on or after the fifth day following the initial positive COVID-19 test. If an employer is requiring a diagnostic test, the employer shall make the test available to the employee at no cost.

Similarly, an employer may require an employee to provide documentation of a family member’s positive test results. An employer is not obligated to provide the additional 40 hours of new SPSL if an employee refuses to provide documentation of the COVID-19 test results.

Similar to the prior supplemental COVID paid sick leave law, new SPSL pay is limited to \$511 per day or \$5,110 in the aggregate.

Also, importantly, although the new SPSL law does not go into effect until February 19, 2022, it is retroactive to January 1, 2022. Thus, an employee that has taken leave that qualifies under the first bucket or second bucket (as defined above), may request retroactive payments. As of now, the law is not requiring employers to make retroactive payments without a request by the employee. However, an employee’s request for retroactive payment, if made, is not required to be in a specific form and may be oral or written. Retroactive payments must be made on the next full pay period after any request is made.

Additionally, an employer is not permitted to require an employee to exhaust other leave options before permitting use of new SPSL. Where an employee has already taken paid sick leave, for example, for leave covered under the first bucket, an employer may need to reclassify and calculate the leave to reinstate the paid sick leave amount.

Finally, employers are required to provide employees with written notice setting forth the amount of new SPSL an employee has available. This can be done on an employee’s wage statement or separate writing provided on the designated payday. An employer may not include new SPSL with traditional paid sick leave. It must be listed and treated separately.

Although distinct from California’s paid sick leave laws, the new SPSL law incorporates many of the provisions of California’s regular paid sick leave laws – recordkeeping, wage statement, pay calculation, etc.

If you have any questions regarding this development or other COVID-19 related requirements, please contact Tonya D. Hubinger.



Author

[Tonya D. Hubinger](#)

T 925.944.9700

thubinger@brothersmithlaw.com

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2033 North Main Street, Suite 720

Walnut Creek, California 94596

T 925.944.9700 F 925.944.9701

www.brothersmithlaw.com

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