



## Memorandum

TO: Our Clients

FROM: Levinson Arshonsky & Kurtz, LLP

DATE: April 5, 2021

RE: Covid-19 – California Supplemental Paid Sick Leave Requirement

---

### **COVID-19 – 2021 CALIFORNIA SUPPLEMENTAL PAID SICK LEAVE REQUIREMENT**

While many thought the COVID-19-related legislation would end with the conclusion of 2020, that has not been the case and the seeming never-ending stream of legislation in response to the pandemic continues into 2021. The latest regulation requiring compliance by California employers impacts all employers with 26 or more employees.

On March 19, 2021, Governor Gavin Newsom signed Senate Bill 95, a new COVID-19 California Supplemental Paid Sick Leave (“CSPSL”) into law. The new CSPSL is similar to the prior state Supplemental Paid Sick Leave law that expired on December 31, 2020. However, the current CSPSL contains substantial differences impacting more California employers as set forth below:

#### **EFFECTIVE AND EXPIRATION DATES**

The CSPSL went into effect on March 29, 2021, is retroactive to January 1, 2021, and expires on September 30, 2021. Of course, California could always extend or renew the benefits beyond September 30, 2021.

#### **ELIGIBLE EMPLOYEES**

All covered California employees, full-time and part-time, are eligible for the CSPSL. A covered employee is anyone who is employed by a covered hiring entity (26 or more employees) and who leaves his or her residence to perform work for a hiring entity.

#### **USES OF THE PAID LEAVE**

An employee may use paid leave when unable to work for any of following reasons (the availability for leave has been increased to include obtaining and recovering from effects of the COVID vaccine):

- Caring for Yourself. The employee is subject to a quarantine or isolation period related to COVID-19 or is experiencing symptoms of COVID-19 and/or seeking a medical diagnosis.
- Vaccine-Related. The employee is attending an appointment to receive a COVID-19 vaccine or is experiencing symptoms related to having received a COVID-19 vaccine.
- Caring for a Family Member. The employee is caring for a family member who is subject to a quarantine or isolation period related to COVID-19 or the employee is caring for a child whose school or place of care is closed or unavailable because of COVID-19 on the premises.

### **AMOUNT OF LEAVE REQUIRED**

A full-time employee is entitled to 80 hours of CSPSL. Employees who are not full time, but work a regular schedule, are entitled to supplemental paid sick leave equal to the number of hours they regularly work over two weeks. Employees who work variable schedules are entitled to a total number of leave hours equal to 14 times the average number of hours worked each day in the previous 6 months.

The California Labor Commissioner has prepared a Frequently Asked Questions page that addresses many scenarios about calculating the amount of leave required and is available [here](#).

### **AMOUNT OF WAGE REPLACEMENT**

Similar to other COVID sick leave caps, the total that employers must pay based on the employees' regular earnings is limited to \$511 a day or \$5,110 in the aggregate for the duration of the leave.

**RETROACTIVITY.** The new CSPSL applies retroactively to January 1, 2021. In order to be paid for leave already taken for a qualifying reason, employees must make an oral or written request to the employer. The employer must then issue payment on or before the payday for the next pay period. Any retroactive CSPSL received by an employee counts against their total CSPSL eligibility.

### **OFFSET AND INTERACTION WITH EMPLOYER'S EXISTING POLICIES**

Employers may not require employees to first use other paid leave provided by the employer, so **this leave is *in addition to and before application of any paid sick leave or Paid Time Off* provided by employer.**

Setoff. However, the CSPSL allows a setoff in hours if paid COVID-related leave is provided based on other obligations. If an employer paid supplemental sick leave benefits for any of the covered reasons between 1/1/2021 and 3/29/2021, the employer is entitled to deduct those hours from the total benefit required under the new law. For example, an employer who provided a full-time employee 40-hours of supplemental paid sick leave in February 2021 pursuant to another

ordinance or their own voluntary COVID leave can credit the already-provided 40 hours toward the new 80-hour obligation.

Interaction with Cal/OSHA Exclusion Pay. Under the Cal-OSHA Emergency Standards (enacted 11/30/2020), employers must continue the benefits of employees who are excluded from the workplace due to COVID-19 exposure. The CSPSL provides that employers may require that employees first exhaust their leave under the CSPSL before receiving additional exclusion pay. Thus, CSPSL is required to be in addition to exclusion pay under the Cal/OSHA Emergency Standards.

FFCRA. **Federal law currently provides tax credits** for employers with less than 500 employees who provide COVID-19 related paid sick leave voluntarily. Employers should check with their CPA or financial advisor for the applicability of payroll tax credits for leave provided under CSPSL.

## **REQUIRED NOTICES**

Employers must post the notice prepared by the California Labor Commissioner available [here](#) at the workplace or provide it electronically to employees who do not frequent the workplace.

Employers must also list CSPSL on the paystub for employees as a separate line item, separate and apart from regular California paid sick leave, or PTO balances. For variable-scheduled part-time employees, employers must calculate the initial amount of CSPSL available as of the first printing and put (variable) next to it on the wage statement. The employer would then do the actual calculation if/when the employee requests the leave.

***This material is for informational purposes only and does not constitute legal advice. If you have any questions regarding these new laws and applicability to your business, please contact:***

Jennifer Raphael Komsky, Esq.  
Employment Law Partner  
Levinson Arshonsky & Kurtz LLP  
[jkomsky@laklawyers.com](mailto:jkomsky@laklawyers.com)  
(818) 382-3434