



## Memorandum

TO: Our Clients

FROM: Levinson Arshonsky & Kurtz, LLP

DATE: September 22, 2020

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

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

There appears to be a never-ending stream of legislation in response to the pandemic. The latest regulation requiring compliance by California employers impacts larger employers (over 500 employees) and health care providers and first responders of any size. This legislation is in response to the Federal Families First Coronavirus Response Act, (the “FFCRA”) to provide the same protections in California to those that were previously excluded from the FFCRA’s benefits.

Unlike the FFCRA, the new legislation, AB 1867, (text of the bill available [here](#)) only provides Emergency Paid Sick Leave to workers (as opposed to additional paid leave while caring for children whose schools are not physically open.) Additionally, this bill does not provide for any reimbursement or offset to the employer for the additional paid leave provided to employees (the FFCRA provided a payroll tax credit for 100% of the benefits paid out).

Essentially, the Act provides two weeks of paid sick leave for full-time employees. The specifics of the law are set forth below:

### **EFFECTIVE AND EXPIRATION DATES OF THE ACT**

The law is effective beginning September 19, 2020 through December 31, 2020, or until the expiration of the FFCRA’s emergency paid sick leave requirements, whichever is later. Although the FFCRA is set to expire on December 31, 2020, AB 1867 will be extended if the federal government extends the FFCRA. California might on its own, of course, extend the benefits past December 31, 2020 if the pandemic continues and no vaccination is in sight.

### **ELIGIBLE EMPLOYEES**

All employees, full-time and part-time, are eligible for the emergency paid sick leave. A covered employee is anyone who is employed by a covered hiring entity and who leaves his or her residence to perform work for a hiring entity.

## **USES OF THE PAID LEAVE**

An employee may use leave when unable to work for any of three reasons:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- A health care provider advises the employee to self-quarantine or self-isolate due to concerns related to COVID-19; and/or
- The hiring entity prohibits the employee from working because of health concerns related to the COVID-19's potential transmission.

## **AMOUNT OF LEAVE REQUIRED**

A full-time employee is entitled to 80 hours of supplemental paid sick leave. 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**

While the total that employers must pay is limited to \$511 a day or \$5,110 in the aggregate for the duration of the leave, employers must calculate this supplemental paid sick leave at a rate equal to the highest of the following:

- The employee's regular rate of pay for the last pay period (including any collectively bargained pay rate);
- The state minimum wage; or
- The local minimum wage.

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

Employers may not require employees to first use other paid leave provided by the employer before using the emergency paid sick leave, so this leave is in addition to any paid sick leave or Paid Time Off previously provided by employers.

However, employers that previously provided COVID-19-related supplemental paid sick leave for the same reasons that AB 1867 now requires, and who paid the same or greater compensation, can use those hours to offset their new supplemental paid sick leave obligations. The offset may include benefits that the employer already paid pursuant to local COVID-19-related public health emergency leave ordinances.

## **REQUIRED NOTICES**

Employers must post the notice prepared by the California Labor Commissioner (non-food sector worker notice available [here](#) and food sector worker notice available [here](#)) at the workplace or provide it electronically to employees who do not frequent the workplace. Employers also must maintain use records for three years.

Employers must also provide written notice of the amount of supplemental paid sick leave available either on the employee's wage statement or in a separate writing provided to the employee on the existing designated pay dates.

## **NONDISCRIMINATION AND ANTI-RETALIATION**

AB 1867 also prohibits employers from discriminating or retaliating against employees for requesting leave or rights under AB 1867. Moreover, AB 1867 includes a rebuttable presumption of retaliation if an employer takes an adverse employment action against an employee within 30 days of the employee's requesting their leave or rights under the new law.

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:

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