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FAQ: California's Supplemental Paid Sick Leave Requires Paid Time Off for COVID-19-Related Reasons

On Friday, March 19, 2021, Governor Newsom signed a new law that provides California employees with COVID-19 Supplemental Paid Sick Leave (CA CSPSL) for certain employees (covered employees) who have been affected by COVID-19. The law took effect **Monday, March 29, 2021** and applies retroactively to January 1, 2021. The text of the law is available [here](#).

Davis+Gilbert Labor + Employment attorneys [Jessica Golden Cortes](#) and [Samantha Padilla](#) summarize key questions and answers from the new law. If you have any additional questions, please contact either of the authors or the Davis+Gilbert attorney with whom you have regular contact.

1. Q. Which employers are subject to CA CSPSL?

- A. Public and private sector employers that employ more than 25 employees.

2. Q. Who qualifies for paid time off under CA CSPSL?

- A. Employees are eligible for leave under CA CSPSL if they are unable to work or telework when the employee, due to COVID-19, is:
- >> Subject to quarantine or isolation period or has been advised by a health care provider to self-quarantine;
 - >> Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - >> Attending an appointment to receive a COVID-19 vaccine or is experiencing symptoms related to a COVID-19 vaccine;
 - >> Is caring for a family member who, due to COVID-19, is subject to a quarantine or isolation period or has been advised by healthcare professional to quarantine; or

What Employers Can Do Right Now

California employers with 25 or more employees nationwide must disseminate and post [this CA CSPSL notice](#) and be prepared to receive and respond to requests for current and retroactive leave.

Employers must work with payroll providers to ensure that CA CSPSL is timely paid and that employees' wage statements reflect leave taken and remaining.

- >> Is caring for a child whose school or place of care is closed or otherwise unavailable due to COVID-19 on the premises.

Notably, a general stay-at-home order does not mean that a covered employee is “subject to a quarantine or isolation period” for purposes of applying CA CPSL. A quarantine or isolation period is determined and defined by an order or guidelines of the California Department of Health (CDOH), the Federal Centers for Disease Control and Prevention (CDC) or a local health official.

Additionally, those workers who are properly classified as independent contractors are not covered.

3. Q. **When does CA CPSL take effect?**

- A. It took effect Monday, March 29, 2021 and applies retroactively to January 1, 2021.

Employers must make CA CPSL available for immediate use upon the oral or written request of the employee to the employer.

Regarding oral or written requests for retroactive payments for leave taken for a qualifying reason between January 1 – March 28, 2021, the employer has until the subsequent payday for the next full pay period after the request is made to pay the retroactive 2021 CA CPSL. This may involve “reimbursing” employees for any vacation or other paid time off they may have used when they took the time off.

4. Q. **How much leave should be given?**

- A. A full-time employee, or an employee who worked or was scheduled to work, on average, at least 40 hours per week prior to taking leave, is entitled to 80 hours.

The amount to which part-time employees are entitled will depend on the amount of hours worked and the length of time the employee has worked for the employer. If the part-time employee works:

- >> A regular weekly schedule, the employee is entitled to the total number of hours the employee is normally scheduled to work over two weeks.
- >> A variable number of hours, the employee is entitled to 14 times the average number of hours worked per day over the six months prior to the request for leave.



- If an employee has worked a variable number of hours for fewer than six months, but more than 14 days, this calculation should be made based on the entire period the employee has worked for the employer.
- If an employee has worked a variable number of hours and has worked for a period of 14 days or less, the employee is entitled to the total number of hours the employee worked for that employer.

5. Q. How much do employers have to pay employees who qualify for CA CSPSL?

A. Each hour is compensated *up to a cap* at a rate equal to the following:

>> For exempt employees, compensation is calculated in the same manner the employer calculates wages for other forms of paid leave time.

>> For non-exempt employees, the hourly rate is equal to *the highest of the*:

- Employee's regular rate of pay for the workweek in which the employee uses CA CSPSL;
- Employee's total wages, not including overtime premium pay, divided by the employee's total hours worked in the full pay periods of the prior 90 days of employment;
- State minimum wage; or
- Local minimum wage.

The compensation an employer is required to pay an employee is capped at \$511 per day, and \$5,110 in the aggregate. The statute provides that these caps may change if new federal legislation increases these amounts beyond the amounts provided for under the Emergency Paid Sick Leave Act established by the federal [Families First Coronavirus Response Act \(Public Law 116-127\)](#). If that occurs, the new federal dollar amounts would apply.

6. Q. Do employers have to notify employees of CA CSPSL?

A. Yes. Employers must display the required poster summarizing the law in a conspicuous place. An employer can also satisfy this requirement by disseminating a copy of the poster electronically. The poster is available [here](#).



7. Q. How does CA CSPSL interact with the Cal-OSHA COVID-19 Emergency Temporary Standards?

- A. An employer may require a covered employee to first exhaust their CA CSPSL to satisfy the requirement to maintain an employee's earnings when an employee is excluded from the workplace due to COVID-19 exposure under the [Cal-OSHA COVID-19 Emergency Temporary Standards](#).

8. Q. How does CA CSPSL interact with existing leave entitlements?

- A. An employee who has reached the maximum amounts must be allowed to utilize other paid leave that is available to the employee in order to fully compensate the employee for any leave taken.

An employer cannot require an employee to use any other paid or unpaid leave, paid time off, or vacation time available to the employee before the employee uses, or in lieu of, CA CSPSL.

9. Q. How long will CA CSPSL be in effect?

- A. The requirement applies until September 30, 2021; provided, however, that if an eligible employee is taking leave on the expiration date, the employee is entitled to complete their leave under the law.

10. Q. Is there an anti-retaliation provision?

- A. Yes. Similar to California's existing Paid Sick Leave statute, an employer may not deny an employee the right to use CA CSPSL, or discharge, threaten to discharge, demote, suspend, or otherwise discriminate against an employee for using or attempting to use CA CSPSL. An employee also cannot be retaliated against for alleging a violation of the new law, or cooperating in an investigation or prosecution of such an alleged violation.

11. Q. Are there any other legal or logistical considerations?

- A. Yes. Starting in the first full pay period after March 29, 2021, employers must provide in each pay period an itemized wage statement reflecting any CA CSPSL the employee used and their balance of remaining CA CSPSL. These amounts must be displayed separately from any pre-COVID paid sick leave available.



For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

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