Engage PEO Client

California Updates: Expansion of COVID Supplemental Paid Sick Leave, and Job-Protected Family Leave

As California continues to battle the COVID-19 pandemic, Governor Gavin Newsom has signed into law important legislation detailed below that takes effect in 2020 and 2021.

California Governor Codifies COVID-19 Supplemental Paid Sick Leave

On September 9, 2020, Governor Newsome signed into law COVID-19 related Assembly Bill 1867 (linked **here**).

In addition to codifying the required for food employees working in food facilities to wash their hands every thirty (30) minutes and additionally as needed, the new law codifies the Governor's Executive Order ("EO") N-51-20 that addresses COVID-19 supplemental paid sick leave for eligible food sector workers. Click **here** to view Engage's April 29, 2020 Client Alert that discusses, in part, the EO N-51-20.

Per the new law, if an employer provided an eligible food sector employee with the equivalent amount of supplemental COVID paid sick leave ***prior*** to the enactment of the law on September 9, 2020, the employer is not required to provide additional COVID-19 supplemental leave pursuant to the new law. Notably, the new law states that (1) the requirement to provide eligible food sector workers with COVID supplemental paid sick leave applies retroactively to April 16, 2020 and will expire on either December 31, 2020 or upon the expiration of any extension of the federal Families First Coronavirus Response Act (FFCRA), whichever is later; and (2) a food sector worker is entitled to continue their COVID supplemental paid sick leave after the expiration of the new law if the worker was on such leave at the time of the expiration.

Additionally, similar to the various California counties in the Spring of 2020, the new statewide law expands the availability of COVID-related paid sick leave pursuant to the FFCRA to eligible non-food-sector workers, who leave their homes or place of residence, to work for a California employer with 500 or more employees in the United States, the District of Columbia, or any U.S. territory. Like the FFCRA, eligible full-time employees can use up to 80 hours of COVID supplemental paid sick leave. If the worker is not a full-time employee or firefighter, the eligible worker's leave hours will be determined per one of the two methods described below:

1. If the eligible employee works a **normal schedule**, the employee will be eligible for supplemental paid sick leave in the amount of the total number of hours the worker normally is scheduled to work over a two-week period; or
2. If the eligible employee works **varying schedules**, the employee will be entitled to supplemental paid sick leave in the amount of "14 times the average number of hours the covered worker worked each day for the [employer] in the six months preceding the date the covered worker took COVID-

> 19 supplemental paid sick leave. If the covered worker has worked for the [employer] over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the covered worker has worked for the [employer]."

For covered employers of non-food-sector workers, beginning the first full pay period after the September 9, 2020 enactment of the new law, the employers must provide eligible employees the amount of COVID supplemental paid sick leave available on their itemized wage statements ***or*** on a separate writing provided to the employee on the designated pay date.

Of importance, the non-food-sector-worker statewide COVID supplemental paid sick leave requirement applies to *any entity*, **including public entities, employing health care providers and emergency responders, as defined by federal regulations but who elected to exclude health care providers and emergency responders from emergency paid sick leave per the FFCRA.** The ***non***-food-sector-worker COVID-19 supplemental paid sick leave took effect on September 19, 2020 and will expire on December 31, 2020 or with the expiration of any extension of the FFCRA.

Please note that the new California statewide COVID supplemental paid sick leave is **in addition** to regular paid sick leave provided pursuant to the California mandated regular sick leave pursuant to the California Healthy Workplace Healthy Family Act of 2014, and covered employers must retain records documenting the statewide COVID supplemental paid sick leave for at least three years.

The California Department of Industrial Relations prepared the following notices, and covered employers should **immediately** post the notices in conspicuous areas in their California workplaces:

- **Poster regarding CA COVID-19 supplemental paid sick leave for food sector workers (link here)**; and
- **Poster regarding CA COVID-19 supplemental paid sick leave *non*-food sector workers (link here)**.

California Expands Job-Protected Family Leave to Small Businesses

On September 17, 2020, Governor Newsome signed into law Senate Bill 1383 (link **here**), expanding job-protected leave (of up to 12 weeks) under the California Family Rights Act (CFRA) to employees.

Currently, CFRA requires only California employers with 50 or more employees within a 75-mile radius to provide employees who have worked at least 1,250 hours during the previous 12-month period with up to 12 weeks of unpaid, ***job-protected*** leave during any 12-month period to bond with a new child (after birth, adoption or foster placement), for their own serious health condition (which makes the employee unable to perform the functions of their position, excluding leave for disability on account of pregnancy, childbirth, or related medical conditions), or to care for a ***child, parent, spouse or domestic partner*** with a serious health condition. Also, per current law, if parents of a child work for the same employer, the employer is only required to provide the employees with a total of 12 weeks of protected

leave. Relatedly, since January 1, 2018, the California New Parent Leave Act (NPLA) has required employers with at least 20 employees within a 75-mile radius to provide employees, who have worked at least 1,250 hours during the previous 12-month period, with up to 12 weeks of unpaid, ***job-protected*** leave during any 12-month period to bond with a new born or a child paced in the employee's care via adoption or foster care.

Beginning **January 1, 2021**, the NPLA will expire, and the expanded CFRA will require ***employers with 5 or more employees*** to provide up to 12 weeks of unpaid, job-protected leave to employees who have worked at least 1,250 hours with the employer during the past 12-month period to either bond with a new child (by birth, adoption or foster placement), for their own serious health condition, to care for an expanded group of family members—a ***child, parent, spouse, domestic partner, grandparent, grandchild, or sibling —***with a serious health condition, or ***for military exigency*** ("qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States"). Additionally, the new law will eliminate the "key employee" exception for reinstatement and the requirement that the requisite number of employees work within 75 miles of the worksite, and removes the requirement that a "child" be under age of 18 or a dependent adult child, but it will require covered employers to provide separate job-protected leave to both parents who work for the same employer if requested.

Please contact your Engage Human Resources Consultant if you have any questions.