Engage PEO Client Alert:

California Enacts Expanded 2021 COVID-19 Supplemental Paid Sick Leave

A new and expanded California COVID-19 Supplemental Paid Sick Leave (SPSL) Law will **take effect on March 29, 2021** (10 days after the date on which Governor Newson signed it into law), but it **will apply retroactively to January 1, 2021 on its effective date. The new COVID-19 SPSL is a benefit in addition to the regular paid sick leave required under California state law,** and it expands on the 2020 version of the law that expired on December 31, 2020 (discussed in Engage's September 28, 2020 Client Alert).

The new COVID-19 SPSL will **expire on September 30, 2021** (the same date the recent extension of the voluntary leaves pursuant to the federal Families First Coronavirus Response Act (FFCRA) will expire, as explained in Engage's March 18, 2021 Client Alert. Notably, if a covered employee is taking new COVID-19 SPSL when the law expires, the employee will be "permitted to take the full amount of COVID-19 [SPSL] to which the covered employee otherwise would have been entitled[.]"

Covered Employers

The new COVID-19 SPSL applies to California employers with **more than 25 employees**.

Covered Employees

A **covered employee** is an employee who is **unable to work or telework** due to any of the following seven reasons related to COVID:

1. Subject to a quarantine or isolation period related to COVID-19 as defined by the State Department of Public Health, the CCDC, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 [SPSL] for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period." Thus, covered employees can use the new COVID-19 SPSL leave for multiple quarantine or isolation periods if they do not use the full amount of SPL for the first quarantine or isolation period;
2. Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Needs time to attend a vaccination appointment for protection against contracting COVID-19;
4. Experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework;
5. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
6. Caring for a family member who is subject to a quarantine or isolation order or has been advised to self-quarantine;

A **"family member"** includes the following: Child (regardless of age or dependency "who is either biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis)"; "biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; spouse; registered domestic partner; grandparent; grandchild; and sibling.)

7. Caring for a child (regardless of age or dependency) whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

Amount of New COVID-19 SPSL

A **covered employee** is entitled to a frontloaded 80 hours of the new COVID-19 SPSL **if** (1) the employer considers the employee a full-time employee; **and** (2) the employee works (or was scheduled to work) on average, at minimum, 40 hours per week for the covered employee in the two weeks prior to the date of taking COVID-19 SPSL. In some situations, a firefighter working less hours may still qualify. A **covered employee** who fails to meet the two criteria listed above is entitled to the new COVID-19 SPSL hours based on one of the following calculation methods:

1. "If the covered employee has a **normal weekly schedule**, [the calculation is] the total number of hours the covered employee is normally scheduled to work for the employer over two weeks."
2. If the covered employee works **variable schedules and has worked for the covered employer for at least six months**, the calculation is "14 times the average number of hours the covered employee worked each day for the employer **in the six months preceding** the date the covered employee took COVID-19 supplemental paid sick leave. If the covered employee 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 employee has worked for the employer."
3. "If the covered employee **works a variable number of hours and has worked for the employer over a period of 14 days or fewer**, [the calculation is] the total number of hours the covered employee has worked for that employer."

Requests for New COVID-19 SPSL

Covered employees may request the new COVID-19 SPSL orally or in writing.

Compensation for NEW COVID-19 SPSL

Nonexempt covered employees must receive the **highest** of the following compensation when taking the new COVID-19 SPSL:

1. "Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 [SPSL], whether or not the employee actually works overtime in that workweek";
2. "Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment";
3. "The [California] state minimum wage"; or
4. "The local minimum wage to which the covered employee is entitled."

Compensation for taking the new COVID-19 SPSL for **exempt covered employees** must "be calculated in the same manner as the employer calculates wages for other forms of paid leave time."

Compensation for **covered employees** may be capped at $511 per day and $5,110 in the aggregate.

Covered employees are not "required . . . to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 [SPSL] or in lieu of COVID-19 [SPSL]."

Retroactive Payment

If a covered employee requests retroactive payment for leave taken on or after January 1, 2021 for one of the reasons outlined above but taken before the enactment of the new COVID-19 SPSL law, the covered employer must pay the employee the retroactive pay on or before the next full pay period after the request was made.

Credits for COVID-19 SPSL Taken Before Effective Date

If a covered employee took COVID-related leave for one of the seven reasons discussed above before the enactment of the new COVID-SPSL law and was paid an amount equal to or greater than required by the new COVID-19 SPSL law, the hours taken can be credited towards the total hours required for that covered employee.

Interplay with Cal/OSHA Exclusion Pay

If a covered employer excludes a covered employee "from the workplace due to COVID-19 exposure under the Cal-OSHA COVID-19 Emergency Temporary Standards," the covered employer can "require [the] covered employee to first exhaust their [new] COVID-19" SPSL available hours before paying the employee Cal-OSHA exclusion pay.

Written Notice of Available COVID-19 SPSL Hours

Beginning on the first full pay period **after** the effective date of the new COVID-19 SPSL law, covered employers must separately list covered employees' COVID-19 SPSL hours from their regular paid sick leave hours on their wage statements or on a separate written documentation that the employer provides the employee.

If a covered employee works a variable schedule, "an employer may meet the [notice] requirement for such covered employees by doing an initial calculation of COVID-19 [SPSL hours] available and indicating '(variable)' next to that calculation." Notably, such indication "does not exempt an employer from providing a covered employee an updated calculation when such a covered employee requests to use COVID-19 [SPSL] or requests" their paid sick leave records.

Posting Requirement

Covered employers must provide employees notice of the new COVID-19 SPSL law either by posting it at the worksite or emailing it to covered employees if the employees do not frequent the employer's worksite. **To download a copy of the required notice, click here**.

Please contact your Engage HR Consultant if you have any questions.