

SB-95 – COVID-19 Supplemental Paid Sick Leave

What was this new law enacted?

SB 95 was passed by the assembly on March 15, 2021 and the Senate on March 18, 2021. Governor signed it 3-19-21, effective 3-30-21.

When will the bill become effective?

Although the bill states that it will become effective “immediately,” it will actually take effect 10 days after the date it is signed.

When does the law expire?

September 30, 2021

What does the new law do?

1. It extends and expands the requirement to provide supplemental paid sick leave to employees impacted by COVID-19.
2. It basically establishes a new “bank” of 80 hours of COVID-19 related sick leave for covered employees for 2021, even if they were previously provided such leave in 2020.

To which employers does SB 95 apply?

1. This time the paid sick leave law applies to all employers with more than 25 employees
 - a. The prior law (AB 1867) did not apply to smaller employers
2. Employers with 500 or more employees who were already provided supplemental paid sick leave in 2020 must now provide an additional “bank” of leave for covered employees in 2021

What are the four most important things to know about this bill?

1. It greatly expands the list of qualified employees (including adding sections about time off for getting the COVID-19 vaccine and recovering from side effects as a result of the vaccine as well as added employees who telework)
2. It expands the number of employers who fall under the requirements of the paid sick leave requirement
3. It requires employers to pick the rate of pay calculation that gives them the highest rate of pay
4. It provides for a TOTAL of 80 additional hours of sick pay, on top of whatever they may have taken in 2021
 - a. However, it is a maximum of 80 hours, so if an employee receives sick pay from another source, i.e. a specific city or county sick leave Act, then it’s still a total of 80 hours, not 160 hours
5. It applies retroactively to sick leave taken from January 1, 2021 until the date the law becomes effective

Must an employee be working at the workplace to receive paid sick leave under this law?

1. No, and this is another area where it differs from the previous supplemental paid sick leave.
2. Under the prior law, supplemental paid sick leave was required only for employees who left the home to perform their work.

3. SB 95, however, applies to employees who are “unable to work or telework” due to one of the qualifying reasons.

What are the qualifying reasons?

1. The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the CA State Dept of Public Health, the CDC or a local health officer who has jurisdiction over the workplace, OR

a. If more than one order applies, the employee shall be permitted to use the supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period

2. The employee has been advised by a health care provider to self quarantine due to any concerns relating to COVID-19 (note: the language is very broad and says “any” concerns)

3. The employee is attending an appointment to receive the COVID-19 vaccine (Note: this is new)

4. The employee is experiencing symptoms or side effects relating to getting the vaccine that prevent the employee from being able to work or telework (note: this is new)

5. The employee is experiencing symptoms of COVID-19 and/or is waiting for test results or a medical diagnosis (note: this is broader than the previous supplemental paid sick leave policy)

6. The employee is caring for a family member who is ill with COVID-19 or who is subject to a quarantine or isolation order or has been advised to self quarantine

7. The employee is caring for a child whose school or place of childcare is closed or otherwise unavailable for reasons relating to COVID-19

How much leave is required?

1. An employee who is classified as “full time” by the employer is entitled to 80 hours under this supplemental paid sick leave law.

2. An employee who worked or was scheduled to work, on average, at least 40 hours per week in the two weeks before they received supplemental sick leave is entitled to 80 hours of leave.

3. Part time employees are eligible for variable leave amounts based upon hours worked

4. An employee who has a normal weekly schedule is entitled to paid leave hours equaling the total number of hours they are scheduled to work over the two weeks

5. An employee who works a variable number of hours is eligible for leave time equal to 14 times the average number of hours the individual worked each day in the six months before the date of the leave.

How should an employer calculate the hourly rate?

1. The rate of pay for the SB 95 supplemental sick leave differs from the method that was provided under AB 1867

2. For non exempt employees, the paid sick leave shall be paid at the **highest** of the following rates:

a. The rate calculated in the same manner as the regular rate of pay for the work week in which the covered employee uses sick leave, whether or not the employee actually worked overtime during that work week;

- b. The rate calculated by dividing the employee's total wages (not including overtime) by the employee's total hours worked in the full pay period of the prior 90 days of employment;
- c. The state minimum wage; OR
- d. The local minimum wage

How does this new supplemental paid sick leave law interact with other paid leave laws?

- 1. Employers who already provide COVID-19 specific supplemental paid sick leave for leave taken after January 1, 2021, that is available for the same reasons and is paid at the same rate may count those hours toward the supplemental sick leave obligation under SB 95
 - a. For example, leave provided under local ordinances for reasons overlapping with SB 95 may run concurrently.
 - b. The total amount of leave to which any employee is entitled is 80 hours; the employee would not get 160 hours by combining the policies
- 2. However, an employer may not require that an employee use other paid or unpaid leave before the employee uses COVID-19 supplemental paid sick leave OR in lieu of COVID-19 supplemental sick leave
 - a. Therefore, the supplemental sick leave provided is in addition to any paid sick leave that would otherwise be available to the employee.

What type of notice must be provided by the employer?

- 1. Employers are required to provide notice of employees' rights to supplemental paid sick leave
- 2. The bill directs the Labor Commissioner to prepare a model notice template within seven days of the date the bill is signed
- 3. Employers may provide electronic notice for employees who are teleworking

How does the retroactivity of this bill work?

- 1. If an employee previously took leave on or after January 1, 2021 that would have qualified for paid sick leave under this bill and the employer did not provide such paid leave, then upon the oral or written request of the employee, the employer must provide the covered employee with a retroactive payment that provides for such compensation.
 - a. The employee must make a request – but it can be oral or written
- 2. For retroactive payments, the number of hours of leave corresponding to the amount of the retroactive payment shall count toward the 80 hours of pay the employer is required to provide
- 3. The retroactive payment must be paid on or before the payday for the next full pay period after the oral or written request of the employee and must be reflected on the corresponding wage statement.

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