

Overview of California Senate Bill 95

Senate Bill 95 was signed by Governor Newsom on March 19, 2021 and effective on March 29, 2021 applying retroactively to January 1st, 2021 through September 30th, 2021. Unlike Assembly Bill 1867, this bill applies to all employers with more than 25 employees.

DISCLAIMER

The below article is not met to replace the need to read Senate Bill 95 when determining the need to provide this supplemental paid sick leave related to COVID-19. Instead, it is intended to provide an overview of the bill and its various elements. Further, this outline does not include paid sick leave specified in Senate Bill 95 for Firefighters and those that provide in-home supportive services.

A NEW PERIOD OF LEAVE

SB 95 provides for new leave on or after January 1st, 2021. When an employee qualifies for this COVID-19 Supplemental Paid Sick Leave, the employer cannot take credit for leave provided under FFCRA or Assembly Bill 1867 prior to January 1st, 2021.

NOTICE TO EMPLOYEES

Seven days after the date of enactment of this section, the Labor Commissioner shall make publicly available a notice for purposes of COVID-19 supplemental paid sick leave. If an employer's covered employees do not frequent a workplace, the employer may satisfy the notice requirement by disseminating this notice through electronic means, such as by electronic mail.

THE EMPLOYEE CAN SPECIFY

A covered employee may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the covered employee is entitled to receive. This request can be made by the employee to the employer orally or in writing.

SPSL IS IN ADDITION TO REGULAR PAID SICK LEAVE

The total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled to receive shall be in addition to any paid sick leave that employers are required to provide and available to the covered employee. An employer shall not require a covered employee 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 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

THE EMPLOYER WILL NOT PAY TWICE

If an employer decided to pay a covered employee another COVID-19 supplemental benefit for leave taken on or after January 1, 2021, that is payable for qualifying reasons that compensates the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled, then the employer may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee.

DIFFERENTIATE WHAT IS COVID-19 SUPPLEMENTAL PAID SICK LEAVE

COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days/hours.

DISCLAIMER: Please be advised that insurance coverage cannot be altered, bound, or canceled by voicemail, email, facsimile, or online, and insurance coverage is not effective until confirmed in writing by a licensed agent. The materials contained herein do not establish a broker relationship with Poms & Associates Insurance Brokers, LLC, and is provided for informational purposes only. A representative of Poms & Associates Insurance Brokers, LLC can provide you with a personalized assessment. Please contact us at 818-449-9300.

Overview of California Senate Bill 95 (Continued)

QUALIFIERS FOR EMPLOYEES TO RECEIVE COVID-19 SUPPLEMENTAL PAID SICK LEAVE

Covered employees shall be entitled to COVID-19 SPSL as follows:

- The employee is unable to work or telework due to any of the following reasons:
- Subject to quarantine or isolation related to COVID-19 as defined by an order or guidelines by the California Department of Public Health, CDC, or a local health officer.
- Advised by a health care provider to self-quarantine.
- Attending an appointment to receive a COVID-19 vaccination.
- Experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Caring for a family member who is subject to self-quarantine.
- Caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

FULL-TIME EMPLOYEES

Covered employees shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

- 80 hours when the employee satisfies either of the following criteria:
- The employee is designated as full time, or
- scheduled to work on average of at least 40 hours per week in the two weeks preceding the date the covered employee took COVID-19 paid sick leave.

PART-TIME EMPLOYEES

Covered employees that are not considered to be full time or meet the criteria outlined will be entitled to supplemental paid sick leave as follows:

- The total number of hours the employee is normally scheduled to work over a two-week period.
- For varying work hours, the employee should receive:
- 14 times the average number of hours the employee works each day for the employer in the six months preceding the date the employee took COVID-19 leave.
- If the employee has been with the employer for less than six months the calculation shall instead be made over the entire period, the covered employee has worked for the employer.

HOURLY RATE NONEXEMPT EMPLOYEES

Each hour of COVID-19 supplemental paid sick leave shall be compensated at the highest rate of the following:

- Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.
- 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.
- The state minimum wage.
- The local minimum wage to which the covered employee is entitled.

HOURLY RATE EXEMPT EMPLOYEES

COVID-19 supplemental paid sick leave for exempt covered employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

DISCLAIMER: Please be advised that insurance coverage cannot be altered, bound, or canceled by voicemail, email, facsimile, or online, and insurance coverage is not effective until confirmed in writing by a licensed agent. The materials contained herein do not establish a broker relationship with Poms & Associates Insurance Brokers, LLC, and is provided for informational purposes only. A representative of Poms & Associates Insurance Brokers, LLC can provide you with a personalized assessment. Please contact us at 818-449-9300.

Overview of California Senate Bill 95 (Continued)

CAL/OSHA COVID-19 EMERGENCY STANDARDS/AEROSOL TRANSMISSIBLE DISEASES

When an employee is excluded from the workplace due to COVID-19 exposure under the Cal/OSHA COVID-19 Emergency Temporary Standards at Sections 3205 through 3205.4, inclusive, of Title 8 of the California Code of Regulations or the Cal/OSHA Aerosol Transmissible Diseases Standard at Section 5199 of Title 8 of the California Code of Regulations, an employer may require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under this section.

LEAVE CAN APPLY RETROACTIVELY TO JANUARY 1ST, 2021

If the employer did not compensate the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled, then upon the oral or written request of the employee, the employer shall provide the covered employee with a retroactive payment that provides for such compensation. For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee. This retroactive payment shall be paid on or before the payday for the next full pay period after the oral or written request of the covered employee. The retroactive payment shall be reflected on the written notice for the corresponding pay period.

CONCLUSION

SB 95 was signed by Governor Newsom on March 19th, 2021 and is effective as of March 29th, 2021. These requirements sunset on September 30th, 2021 unless extended. It applies to all employers with more than 25 employees. The bill provides for new leave as a result of AB 1867 and the Families First Corona Virus Act expiring on December 31st, 2020. This leave can apply retroactively to January 1st, 2021 and an employer can take credit for any leave provided from this date due to COVID-19 that meets the criteria of SB 95. Unlike AB 1867, SB 95 also requires employers to pay for leave to secure a COVID-19 vaccination.

This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.

Please visit our website at www.pomsassoc.com or call us at 818-449-9300

DISCLAIMER: Please be advised that insurance coverage cannot be altered, bound, or canceled by voicemail, email, facsimile, or online, and insurance coverage is not effective until confirmed in writing by a licensed agent. The materials contained herein do not establish a broker relationship with Poms & Associates Insurance Brokers, LLC, and is provided for informational purposes only. A representative of Poms & Associates Insurance Brokers, LLC can provide you with a personalized assessment. Please contact us at 818-449-9300.