

Filling in the Gap - California State and City Supplemental Paid Sick Leave Measures

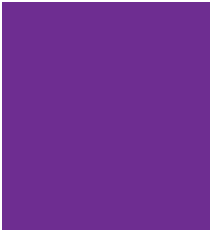
April 30, 2020

As many now know, the federal Families First Coronavirus Response Act (FFCRA) requires employers with fewer than 500 employees to provide emergency paid sick leave to certain employees for COVID-19 related reasons. In order to fill the gap left by federal relief, the State of California and various cities within the state have adopted their own measures requiring *employers with over 500 employees* to provide supplemental sick leave. Below we identify the important features of these new measures:

	State of California April 16, 2020 Executive Order	City of Los Angeles April 7, 2020 Emergency Order	City of San Francisco April 17, 2020 Emergency Order
Covered Employers	Employers with 500 or more employees in the food sector industry.	Employers with 500 or more employees in the city of Los Angeles, or 2,000 or more employees in the United States.	Private employers who have 500 or more employees worldwide.
Number of Hours	Up to 80 hours of sick leave.	Up to 80 hours of sick leave.	Up to 80 hours of sick leave.
Amount of Pay	Capped at \$511 a day or \$5,110 in total.	Capped at \$511 a day or \$5,110 in total.	Capped at \$511 a day or \$5,110 in total.
Pendency	In effect during pendency of statewide stay-at-home orders issued by the State Public Health Officer.	In effect until two calendar weeks after the COVID-19 local emergency ends.	In effect until June 17, 2020, unless reenacted, or the Public Health Emergency issued by the city is terminated.
Covered Employees	Food sector industry employees include farmworkers, agricultural workers, grocery store and fast food chain employees and related delivery drivers. Notably, “gig economy” workers and independent contractors in the food sector industry are also considered employees for purposes of the Executive Order.	Employees must be unable to work or telework and must have been employed with their employer from February 3, 2020 to March 4, 2020. Upon oral or written request, an employer must provide supplemental sick leave to employees who: <ul style="list-style-type: none"> • Are suffering from a COVID-19 infection or are recommended to isolate or self-quarantine; 	Upon oral or written request from employees (using the AB 5 standard - those who provide labor or services for a fee - which created a presumption that workers are city and county of San Francisco) who: <ul style="list-style-type: none"> • Are subject to, or caring for family subject to, a quarantine or isolation order (including shelter in place

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	<p>The food sector employees who are entitled to sick leave are those who:</p> <ul style="list-style-type: none"> • Are subject to quarantine or isolation orders; • Are medically advised to self-quarantine or self-isolate; or • Are prohibited from working due to health concerns. 	<ul style="list-style-type: none"> • Are at least 65 years old or have underlying health conditions; • Need to care for a family who are required or recommended to isolate or self-quarantine; or • Need to provide care for seniors or children whose day care providers are closed and who are unable to secure reasonable alternative care. 	<p>orders);</p> <ul style="list-style-type: none"> • Have been advised to self-quarantine; • Are experiencing symptoms and seeking a medical diagnosis or caring for family member experiencing symptoms and seeking medical diagnosis; or • Are caring for seniors or children whose day care providers are closed.
Offsets		The employer may offset any hour of paid leave provided prior to March 4, 2020 for COVID-19 reasons.	The employer may offset any hour of paid leave provided prior to February 25, 2020 for COVID-19 reasons.
Exemptions	Non food sector industry employers.	Emergency and health services, critical parcel delivery, employers who provide generous leave (a minimum of 160 hours of paid leave annually), new businesses, except for construction and film producers, that started in the city of Los Angeles or relocated from outside the city of Los Angeles on or after September 4, 2019 through March 4, 2020, government and closed business or organizations.	San Francisco International Airport private sector employers, private-sector businesses with employees located in federal enclaves within San Francisco (e.g., the Presidio), and independent contractors. Additionally, private-sector employers may elect to limit health care employees and/or emergency responder employees' leave in certain situations.
Penalties	The Executive Order will be enforced by the Labor Commissioner and employees may file complaints pursuant to Labor Code section 98 or 98.7.	Reinstatement (if terminated), back pay and the supplemental paid sick leave unlawfully withheld calculated at the employee's average rate of pay, along with other legal or equitable relief deemed appropriate.	Reinstatement (if terminated), back pay and supplemental paid sick leave unlawfully withheld calculated at the employee's average rate of pay and other legal or relief deemed appropriate.
Additional Requirements	Includes additional health and safety standards to increase worker and		Employers must provide notice by posting in the workplace, on any intranet or app-based

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customer protection by permitting employees at food facilities to wash their hands every 30 minutes, or as needed, to increase proper sanitation measures.

platform or via email.

Key Takeaways

- Not only is it important to be attentive of the FFCRA and the continued guidance related thereto, it is imperative that employers stay abreast of state and city requirements that are evolving alongside the FFCRA.
- Given the trend set by the state of California, and cities of Los Angeles and San Francisco, we can expect other cities in the state to follow suit and adopt their own supplemental paid sick leave measures. The city of San Jose has enacted a comparable sick leave ordinance which can be found **here**. The city of Oakland is also considering adopting similar legislation. Stay up-to-date with all of our insights and guidance by signing up for future alerts and events **here**.
- Employers must review and update, and in some cases give notice of, their sick policies to ensure they are in compliance with all applicable COVID-19 regulations.

To help our clients manage the employment challenges of COVID-19, wherever their employees are located, we also provide the following resources that may be useful to you:

- We have built out and are continually updating a Global Labor and Employment Tracker as a resource for comparative perspectives on employment law obligations in light of COVID-19.
- A link to our overall COVID-19 hub, where we have collected all our alerts and other resources.
- A link to our US COVID-19 50-State Tracker that provides a review of state and local governmental orders, directives and financial assistance that may impact our clients and communities.
- The coronavirus alerts and other resources can also be identified country by country **here**.

Your Key Contacts



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