

# Sweeney Mason

LLP

## *Coronavirus (COVID-19) Update:*

### *California Mandates COVID-19 Paid Sick Leave*

California has enacted expansive, retroactive Supplemental COVID-19-related Paid Sick Leave ("CASPSL"). Senate Bill 95, signed by Governor Newsom on March 19, 2021, creates California Labor Code Sections 248.2 and 248.3 and requires employers to provide up to 80 new hours of supplemental paid sick leave to employees if they are impacted by COVID-19.

The CASPSL will go into effect on Monday, March 29, 2021, **but applies retroactively to January 1, 2021**. This means that employers who provided unpaid leave to employees for COVID-19-related reasons will need to determine whether to retroactively compensate those employees. The law is set to expire on September 30, 2021.

Employers must provide notice of the new law to employees. A sample notice is available [here](#).

#### **Expanded Eligibility.**

The CASPSL applies to all employers with 26 or more employees. Employers with 25 or fewer employees may elect to provide this leave and will be eligible for tax credits under the FFCRA.

The new law expands employee eligibility to take paid leave. An employee is now entitled to leave if the employee is unable to work or telework because of any one of the following reasons:

1. Employee Care. The employee is subject to a quarantine or isolation period related to COVID-19, has been advised by a healthcare provider to quarantine because of COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
2. Vaccine-Related. The employee is attending an appointment to receive a COVID-19 vaccine or is experiencing symptoms related to a COVID-19 vaccine.

3. Caring for a Family Member. The employee is caring for a family member who is subject to a quarantine or isolation period related to COVID-19 or who has been advised to self-quarantine, or the employee is caring for a child whose school or place of care is closed or unavailable because of COVID-19 on the premises.

Leave provided under the new law is in addition to any leave an employee took in 2020 under the Families First Coronavirus Response Act (FFCRA), i.e., a new 80 hours.

### **Requesting Leave**

An employee can request leave orally or in writing. CASPSL cannot be conditioned upon a medical certification. It may be appropriate in some cases to request additional documentation, however, if the employer has other information indicating that the leave is being requested for an invalid reason.

### **Calculating the Amount of Leave**

A covered employee is entitled up to 80 hours of CASPSL if the employee works full time. For part-time employees, the employee is eligible for paid sick leave based on the number of hours the employee is normally scheduled to work for the employer over a two-week period.

The rate of pay for the CASPSL shall be the highest of the following (assuming non-exempt employees):

1. The employee's regular rate of pay;
2. A rate calculated by dividing the covered employee's total wages, excluding overtime premium pay, by total hours worked in the full pay periods of the prior 90 days of employment;
3. The state minimum wage;
4. The applicable local minimum wage.

The maximum paid sick leave amount per employee is \$511 per day or \$5,110 in the aggregate. Employees who earn more than the maximum benefits may use other available paid leave to fully compensate them for their time away from work. Please note that if the federal government ends up passing any federal supplemental paid sick leave bill that provides for a higher maximum benefit, the cap under the CASPSL will automatically increase to match the federal benefit.

### **Record-Keeping**

The employee's paystub must reflect the amount of CASPSL available and the applicable rate of pay, **as a separate line item from regular paid sick leave.**

The Labor Commissioner is required to provide a model notice template wage statement by April 5, 2021. FAQs are answered [here](#).

*Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no "one-size-fits-all" approach to COVID-19-related legal matters. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason LLP.*

*Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason LLP is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.*

*For more information, please contact our employment team at 408-356-3000 or via email: Roger Mason at [rmason@smwb.com](mailto:rmason@smwb.com) or Rachael Brown at [reb@smwb.com](mailto:reb@smwb.com).*

*The following links may assist you in evaluating some of the issues you may have. Stay safe!*

**Cal/OSHA:**

[Preparing Your Workplace for COVID-19](#)

[Emergency Temporary Standards](#)

[Emergency Temporary Standards FAQs](#)

**California:**

[Blueprint for a Safer Economy](#)

[EDD COVID-19 Overview](#)

[EDD COVID-19 FAQs](#)

[Supplemental Paid Sick Leave FAQs](#)

**Santa Clara County:**

[Current Risk Reduction Order \(October 5, 2021\)](#)

[Risk Reduction Measures \(March 2, 2021\)](#)

[Social Distancing Protocol \(October 5, 2021\)](#)

[Public Health Department FAQs](#)

[Requirements for Businesses](#)

[Guidance for Businesses](#)

**San Jose:**

[Paid Sick Leave Ordinance](#)

**DOL Publications:**

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

**IRS Guidelines:**

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

**SBA Guidelines:**

[PPP FAQs](#)

**CDC Guidelines:**

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

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