

CA COVID-19 SUPPLEMENTAL PAID SICK LEAVE RETURNS



On February 9, 2022, Governor Gavin Newsom revived California's COVID-19 Supplemental Paid Sick Leave ("SPSL"). Employers may recall that California had a similar law last year, but it expired in September 2021. This new SPSL law goes into effect on February 19, 2022, but it will be applied retroactively to January 1, 2022, and it will expire on September 30, 2022. **Covered Employers**

SPSL applies to employers with 26 or more employees.

Covered Employees

SPSL applies to employees who are unable to work or telework due to one of the qualifying reasons listed below.

Qualifying Reasons For SPSL

A covered employee is entitled to 40 hours of SPSL if they are:

- Subject to quarantine or isolation due to COVID-19 as defined by an order or guidance of the CDPH, CDC, or a local public health officer. If the employee is subject to more than one order or guidance, the employee is allowed to use SPSL for the minimum quarantine or isolation period under the order or guidance that provides for the longest minimum period; or
- Advised by a health care provider to isolate or quarantine due to COVID-19; or
- Attending a COVID-19 vaccine or vaccine booster appointment for themselves or a family member (employers can limit this to 24 hours unless the employee provides medical documentation that the employee or family member is still experiencing symptoms related to the vaccine or booster); or
- Experiencing COVID-19 symptoms; or
- Caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster; or
- Caring for a family member who is subject to an order or guidance, or is required to isolate or quarantine as described above;
- Caring for a child, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

A covered employee is entitled to an **additional** 40 hours of SPSL if the employee, or a family member for whom the employee is providing care, tests positive for COVID-19. The employer can require proof of a positive test.

Calculation of Leave Amount Based on Work Hours

Employees who work full time or were scheduled to work, on average, at least 40 hours per week in the 2 weeks prior to taking SPSL, are entitled to up to 80 hours of paid time off. Employees who work fewer or variable hours are subject to a different calculation that is based on the number of hours they typically work. Employers should contact legal counsel for guidance on how to calculate SPSL for employees who are part-time or work variable hours.

Retroactive Application and Credit

If, prior to the SPSL going into effect, the employer already paid employees an amount equal to or greater than the amount employees would have been entitled if SPSL was in existence as of January 1, 2022, then upon request of an employee, the employee can be credited for any leave hours used for COVID-specific leave purposes, and the employer can be credited for providing those hours pursuant to SPSL.

If the employer did not already pay employees an amount equal to or greater than the amount employees would have been entitled if SPSL was in existence as of January 1, 2022, then upon request of an employee, the employer must provide the employee a retroactive payment for the SPSL.

No Overlap With Cal/OSHA Exclusion Pay

SPSL is separate from exclusion pay required under Cal/OSHA's Emergency Temporary Standards (ETS) for employees exposed to COVID-19 in the workplace. Therefore, the SPSL law does not credit

employers for exclusion pay that is required by the ETS. Further, employers cannot require employees to exhaust SPSL before receiving exclusion pay under the ETS.

SPSL Maximum Pay

The amount of required SPSL pay is capped at \$511 per day and \$5,110 total per employee unless these amounts are increased by federal law (which is not currently expected)

SPSL Takes Priority Over Other Leaves

Employers cannot require employees to use any other type of leave before requesting SPSL, including, but not limited to, California Paid Sick Leave.

Requirement to Identify SPSL Usage on Wage Statements

Employers must list the amount of SPSL that has been used on employees' paystubs. If an employee has not yet used any leave, their wage statement must reflect that "0" hours have been used.

Requirement to Provide Written Notice to Employees

Employers are required to post notice of employees' SPSL rights. The Labor Commissioner intends to provide a sample notice within seven days of the enactment of the law – by February 16, 2022. Employers should provide the notice via email to remote employees.

Hoge Fenton's Employment Law Group has extensive experience advising employers on California's SPSL laws and other issues pertaining to the COVID-19 pandemic. For more information and to contact Hoge Fenton's Employment Law Group, click **[here](#)**.

Our Employment Law Group



Sarju Naran (he/him) is a zealous advocate for his clients and approaches litigation with creativity and strategy. Chair of Hoge Fenton's Employment Law Group, Sarju's experience spans from representing middle-market and family-owned closely-held businesses to large multi-national companies. He regularly litigates and provides advice and counsel to companies on wage and hour issues, trade secret misappropriation, employee mobility, wrongful termination, performance management, and leaves of absence.



Jenn Protas (she/her) helps employers navigate California's numerous employment laws and defends employers with an eye toward successful, yet cost-effective resolution. Jenn is a committed advocate for her clients and a tenacious litigator. She defends employers on matters related to wage and hour law, wrongful termination, harassment, discrimination, and retaliation in single-plaintiff litigation, Private Attorney General Act actions, and/or class actions. Jenn's practice also includes housing discrimination matters and business litigation.



Maysa Saeed (she/her) is an associate attorney in Hoge Fenton's Employment Law Practice Group. Her practice focuses on employment counseling and litigation and assists clients in all aspects of employment law. Prior to joining Hoge Fenton, Maysa was a litigation associate with experience litigating various commercial, employment, and real estate matters. Maysa's litigation experience provides her with invaluable insight and perspective when advocating and advising clients to resolve or prevent legal disputes.

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