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California COVID-19 Supplemental Paid Sick Leave Signed Into Law

We previously provided a summary of key provisions under the then-proposed COVID-19 Supplemental Paid Sick Leave (“SPSL”) Senate Bill (“SB”) 95 which adds to the California Labor Code and requires future and retroactive sick pay for COVID-19 related reasons. On March 19, 2021, Governor Newsom signed SB 95 into law. The requirement to provide COVID-19 supplemental paid sick leave will be effective March 29, 2021 (10 days after the law is enacted).

Employers who have paid employees another supplemental benefit which is equal to or greater than the amount owed under the SPSL, such as the now optional paid leave under the Families First Coronavirus Response Act (“FFCRA”), may count the hours of paid benefits toward the total number of hours the employee would have been entitled to under this new law.

What This Means for Employers:

We recommend that employers take the following steps to ensure that they are prepared to comply with the requirements of COVID-19 SPSL:

1. Update your payroll system to ensure that the COVID-19 SPSL availability is set forth on employee wage statements (pay stubs) separately from paid sick days.

2. Employers that are covered by the FFCRA (certain public employers, and private employers with fewer than 500 employees) should consult with legal counsel and their tax consultants to determine if they would benefit from the tax credits under the optional paid sick leave provided through the FFCRA. If eligible for the tax credits, it may be beneficial for employers to designate paid sick leave as FFCRA leave for employees who are unable to work or telework due to a qualifying reason under FFCRA. Information regarding the optional paid leave during 2021 under FFCRA can be found on the Department of Labor’s website <https://www.dol.gov/agencies/whd/pandemic>. Information regarding the FFCRA tax credits can be found at <https://www.irs.gov/coronavirus/employer-tax-credits>.

3. Post the COVID-19 SPSL Notice in a conspicuous place for all employees to see. Like prior required posters, the notice includes reasons for covered leave and the amount of time eligible employees are entitled to. If employees do not frequent the workplace, employers may satisfy the notice requirement by disseminating it via electronic means, including e-mail. The statute provides a 10-day grace period until March 29, 2021, for employers to comply but you should disseminate or display the poster as soon as feasible. The Labor Commissioner’s model notice is available here: <https://www.dir.ca.gov/dlse/2021-COVID-19-Supplemental-Paid-Sick-Leave.pdf>

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4. Train staff, including human resources employees, on the new, broader, qualifying reasons for leave and the impact on the Cal/OSHA emergency temporary standard exclusion pay.

5. Ensure that you have a written policy for employees to request use of their COVID-19 SPSL. Employees are authorized to choose the number of COVID-19 SPSL hours to use, and when they want to use them for a qualifying reason. Employers should be careful not to retroactively pay employees who have not requested to use their SPSL.

6. For employees that qualify for and request retroactive pay, ensure that any vacation, sick leave or Paid Time Off that was used for a qualifying reason is replenished.

7. Carefully review the Labor Commissioner's SPSL Frequently Asked Questions page. It includes information on: Coverage, Reasons for Taking Leave, Start Date and End Date of the Statute, Requesting Leave from an Employer, Calculating Leave Entitlement, Credits Against Entitlement, Record-keeping and Paystubs, Enforcement, and Relation to Other Laws. The FAQs can be accessed here: <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.