



## NEW REQUIREMENTS FOR INFORMING EMPLOYEES OF POTENTIAL COVID-19 EXPOSURE AND NEW CALIFORNIA SUPPLEMENTAL PAID SICK LEAVE LAWS

Given the continually changing legal landscape, we strongly encourage employers to reach out to Raimondo & Associates with questions regarding specific situations. We are closely monitoring these developments. Because of these frequent developments, and the need to adapt the general guidance below to specific circumstances, employers should consult counsel regarding specific circumstances. There are many nuances and fact-specific elements that make individualized legal counsel on these questions of critical importance.

As always, Raimondo & Associates is here to assist you.

**Contact our office at (559) 432-3000**

### **Assembly Bill 685**

Governor Newsom signed into law AB 685 on September 17, 2020, (effective January 1, 2021), which requires employers to comply with certain reporting requirements and provide notices related to potential COVID-19 exposures in the workplace within one business day of being informed of potential exposure. Upon notification, employers must provide:

1. Notice of potential COVID-19 exposure to employees and employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual
2. Notice to the exclusive representative of employees, if any. This shall contain the same information as would be required in an incident report in a Cal/OSHA Form 300 illness and injury log, unless the information is inapplicable or unknown to the employer;
3. Provide employees and the exclusive representative with information regarding COVID-19-related benefits to which the employees may be entitled under applicable federal, state, or local laws, including but not limited to workers' compensation and options for exposed employees, including COVID-19-related leaves, supplemental sick leave, and negotiated leave provisions, as well as anti-retaliation, anti-discrimination, and anti-harassment protections of the employees; and
4. Notify all employees, employers of subcontracted employees, and exclusive representatives on the disinfection and safety plan that the employer plans to implement.

The notices must be sent in the manner the employer normally uses to communicate employment-related information, and must be in English as well as the language(s) understood by the majority of employees.

Employers must maintain records of the four notices described above for a minimum of three years.

Where employers are notified of a number of cases that meet the definition of a COVID-19 “outbreak” as defined by the California Department of Public Health (“CDPH”), the employer must also notify the applicable local public health agency within 48 hours of the names, number, occupation, and worksite of any “qualifying individuals” related to the “outbreak”.

The CDPH defines an “outbreak” as “three or more laboratory-confirmed cases of COVID-19 within a two-week period among employees who live in different households.” (See CDPH’s “COVID-19 Employer Playbook – Supporting a Safer Environment for Workers and Customers – available online at <https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf>)

For purposes of this requirement, a “qualifying individual” means a person who can establish any of the following requirements:

- A laboratory-confirmed case of COVID-19;
- A positive COVID-19 diagnosis from a licensed health care provider;
- A COVID-19 related isolation order issued by a public health official; or
- Death due to COVID-19 as determined by the County public health department.

### **Assembly Bill 1867**

Governor Gavin Newsom also signed Assembly Bill (AB) 1867 on September 9, 2020, which then took effect on September 19, 2020. The new law, amongst other things, codifies existing Supplemental Paid Sick Leave (SPSL) requirements for food sector workers and expands those same requirements for all California employers with at least 500 employees throughout the United States.

AB 1867 created the new California Labor Code sections 248 and 248.1. LC 248 is limited compared to EO N-51-20 (Governor Newsom’s original executive order creating supplemental paid sick leave) in that employers must provide SPSL only until the federal Families First Coronavirus Response Act (FFCRA) ends, which is currently scheduled for December 31, 2020.

Employers that have provided SPSL pursuant to EO N-51-20 are expressly not required to provide additional SPSL per LC 248.

LC 248.1 extends the SPSL to include all California “hiring entities” with 500 or more employees in the United States, the District of Columbia, or any U.S. territory, as well as to individuals who leave their place of residence to perform work for a hiring entity that employs them. LC 248.1 does not make an exception for unionized workforces. It also excludes food sector workers from its provisions, as they are already covered by LC 248. LC 248.1 also extends SPSL to any entity that is subject to FFCRA but has elected to exclude health care provider or emergency responder employees from FFCRA’s

emergency paid sick leave requirements. Importantly, SPSL does not provide tax relief, whereas the FFCRA provides an employment tax credit for pay provided as Emergency Paid Sick Leave. Employers that previously excluded healthcare or emergency responder employees from FFCRA may wish to reconsider using it in order to benefit from the FFCRA's tax credits.

### **Amount of Leave**

Employees covered by LC sections 248 and 248.1 are entitled to a proportionate amount of the maximum 80 hours of SPSL. Full-time employees are entitled to the entire 80 hours.

Part-time workers received a proportionate amount of the 80hour maximum based on their weekly schedule. Workers with normally scheduled hours are entitled to receive only the amount of hours they would have been scheduled to work over a two week period. For workers with variable hours, they receive 14 times the average number of hours they worked each day for the hiring entity in the six months preceding the day the employee took leave.

Employers may not require employees to use their SPSL.

Under LC section 248.1, if the employer has already provided supplemental paid leave between March 4, 2020, and September 19, 2020, but did not compensate the worker in an amount equal to or greater than the amount of compensation LC 248.1 mandates, the employer may cure the deficiency by providing supplemental pay to the worker to satisfy LC 248.1's pay requirements, and thereby count the time already provided towards the total 80 hours.

Under LC 248 and LC 248.1, employees may use SPSL if they are:

1. Subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19;
3. Prohibited from working by the hiring entity due to health concerns related to the potential transmission of COVID-19.

Employers must make SPSL available for immediate use upon the worker's oral or written request.

### **Rate of Pay**

Employees using SPSL are paid at their regular rate of pay for the last pay period, or the state or local minimum wage, whichever is highest. Regardless of the rate the employee is paid, the maximum amount of pay an employer is required to provide is \$511 per day and \$5,110 in total. SPSL payment must be made no later than the payday for the next regular pay period after leave was taken.

### **Paystub Notice**

LC 248.1 requires that employers must provide employees with the available balance of SPSL on the employee's paystubs in a similar manner to the mandatory three days of California Paid Sick Leave. Food sector employers that are governed by LC 248 are not required to provide this notice to their employees.

Sincerely,

Anthony Raimondo

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