

CALIFORNIA'S COVID-19 SUPPLEMENTAL PAID SICK LEAVE'S SUN WILL SET: WHAT EMPLOYERS CAN EXPECT ONCE SB 95 EXPIRES

Insights
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California was one of the first states to pass a pandemic paid sick leave requirement for employers – but now that the leave obligations are about to expire, employers are bound to have questions. [SB 95 went into effect](#) on March 29, 2021 (retroactive to January 1, 2021), extending and expanding the requirements for employers to provide supplemental paid sick leave (SPSL) to employees impacted by COVID-19. But with SB 95 set to expire on **September 30, 2021** and Governor Newsom's office having indicated there are no plans to extend the law or otherwise mandate CA SPSL beyond the end of September, what do you need to know?

The Basics

SB 95 extended SPSL requirements to California employers with more than 25 employees, established a new "bank" of COVID-19 related sick leave in 2021, and expanded on the qualifying reasons for which employees could use SPSL. However, employees who take SPSL as of September 30, 2021 will be permitted to continue to take the leave they are currently on even if the entitlement extends past that date (employers need not grant SPSL for employees who request leave after the expiration date).

The Sun Continues to Shine in Some Cities and Counties

Though California's SPSL is set to expire on September 30, some cities and counties that enacted their own SPSL measures have expiration dates extending beyond this time. The following localities have continuing SPSL ordinances;

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thus, employers with employees in these cities and counties should be wary of potential ongoing obligations.

- **Long Beach City:** The City of Long Beach's local [SPSL ordinance](#) states the City Manager shall report back to the City Council and Mayor every 90 days on the effectiveness of the ordinance and whether it is still necessary based on the City's recovery from COVID-19's impact. The City Council and Mayor will then determine the applicable sunset date based on the report. As of this writing, there has not been any report made by the City Manager regarding an expiration date.
- **Los Angeles City:** Though Los Angeles' City's [Vaccine Paid Sick Leave Due to COVID-19](#) measure — which went into effect on June 24 and applies retroactively to the beginning of 2021 — expires at the same time as SB 95, the sunset date of the City's [SPSL order](#) does not expire until two calendar weeks after the expiration of the COVID-19 local emergency period. As of this writing, the local emergency period has not been lifted. Importantly, the SPSL order revisions apply *prospectively* and include two substantive changes. First, the revised order allows employees to use SPSL to cover time off for vaccine-related reasons, including travel time to and from an appointment as well as time to recover from vaccine-related symptoms. Second, while employers may not require a doctor's note or other documentation to verify an employee's use of SPSL, it may request verification of receipt of a COVID-19 vaccine.
- **Los Angeles County** (unincorporated areas): Los Angeles County's [SPSL ordinance](#) and [Employee Paid Leave for Expanded Vaccine Access ordinance](#) will expire two calendar weeks after the expiration of the COVID-19 local emergency as declared by the Board of Supervisors. As of this writing, the COVID-19 local emergency has not been lifted and the Los Angeles County SPSL ordinance is still in effect.
- **Oakland:** The City of Oakland enacted an [emergency ordinance](#) on January 19, 2021 extending and revising its emergency paid sick leave ordinance, which retroactively applies from December 31, 2020. The sunset date of this emergency ordinance depends on expiration of Oakland's March 9, 2020 Declaration of COVID-19 Emergency, which has not expired as of this writing.

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- **San Mateo County** (unincorporated areas): While San Mateo County's [COVID-19 Emergency Sick Leave](#) expired on June 30, 2021, a related law provides *county employees* the right to take emergency sick leave if they are unable to work or telework due to COVID-19-related reasons from January 1, 2021 through December 31, 2021.

What Lies Beyond the Horizon?

Following Governor Newsom's indication that SPSL will not be extended, what can employers expect? While many employers may be pleased their obligations under SB 95 will expire at the end of the month, it is possible that other cities and counties with expired (or soon to be expired) SPSL measures —such San Francisco, Sacramento, and San Jose — will take emergency action to extend or otherwise issue new SPSL requirements. Moreover, as discussed above, several local governments still have their own SPSL ordinances in place.

On the federal level, the Families First Coronavirus Response Act (FFCRA), which was extended through the American Rescue Plan Act of 2021 (ARPA) to allow employers to voluntarily continue to provide COVID-related SPSL and still receive the available tax credits, will also expire as of September 30, regardless of whether an employee is on leave at the time of expiration.

On September 9, President Biden released [the Path Out of The Pandemic](#) COVID-19 Action Plan. This plan will require all employers with 100 or more employees ensure their workers are either fully vaccinated or produce a negative test result on at least a weekly basis. This requirement will be developed and implemented by the Occupational Safety and Health Administration (OSHA) through Emergency Temporary Standards (ETS). Despite this announcement, the parameters and timeline of the ETS are still unclear, as well as and how it will be implemented in California.

California employers should be on the lookout for additional SPSL laws that may come down or extend beyond September 30. We will monitor developments related to paid sick leave and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any one of [our six California offices](#).

