



# Los Angeles County Implements Supplemental Paid Sick For COVID-19 Purposes

Insights

4.28.20

The Los Angeles County Board of Supervisors just unanimously approved a Supplemental Paid Sick Leave designed to fill in the gaps between the Families First Coronavirus Relief Act and Governor Newsom's Executive Order N-51-20 providing supplemental paid sick leave to food sector workers. Notably, **this order is retroactive and an employer's obligation to provide supplemental paid sick leave began March 31, 2020**. The basic provisions are highlighted below.

## Who Is Covered?

- **Employers** who have 500 or more employees nationally.
  - **Exceptions:** Federal, state, or local government agencies
- **Employees** who are employed on the effective date of the order (April 28, 2020) and perform *any* work within the geographic boundaries of unincorporated L.A. County. There is a presumption that an individual is an employee. An employer must rebut this presumption in order to show an individual is actually an independent contractor.
  - **Exceptions:**
    - **Health Care Providers:** an employee who provides emergency response services including, but not limited to: medical professionals, employees who are needed to keep hospitals or other health care facilities well-supplied and operational; employees involved in research, development, and production of equipment, drugs, vaccines, and other items needed to combat COVID-19; and employees included in the definition of health care provider in the U.S. Department of Labor regulations.
    - **Emergency Responders:** an employee who provides emergency response services including, but not limited to: a peace officer; a firefighter, a paramedic; an emergency medical technician; a public safety dispatcher or safety telecommunicator; an emergency response communication employee; rescue service personnel; and employees defined as an emergency responder by the U.S. Department of Labor's regulations.
    - **Food Sector Workers** as defined in Governor Newsom's Executive Order N-51-20.

## How Are Total Hours/Pay Calculated?

- **Full-time employees** (those who work more than 40 hours/week or are classified as full-time by

the employer) are eligible to receive up to 80 hours of supplemental paid sick leave calculated based on the employee's highest average two-week pay period over the period of January 1, 2020 through April 28, 2020.

- **Part-time employees** (those who work fewer than 40 hours/week and are not classified as full-time by the employer) are eligible to receive no greater than the employee's average two week pay over the period of January 1, 2020 through April 28, 2020.

The amount an employee can receive is capped at \$511 per day or \$5,110 total.

### **What Can Supplemental Paid Sick Leave Be Used For?**

Supplemental paid sick leave must be granted upon **written request** (including but not limited to email and text) and a doctor's note or other documentation may be requested. Uses are limited to taking time off:

1. Because a public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19;
2. Because the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 (e.g., is at least 65 or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system);
3. To care for a family member who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19; or
4. To provide care for a family member whose senior care provider or whose school or child care provider ceases operations in response to a public health or other public official's recommendation.

Any waiver of these rights in a Collective Bargaining Agreement must be express, clear, and unambiguous.

### **Definitions That Apply To The Above Reasons For Supplemental Leave**

1. "Family member": employee's child, parent or spouse
2. "Child": biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in as a parent who is either (1) under 18; or (2) an adult dependent child
3. "Parent": biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in as a parent when the employee was a child

### **Are There Any Exemptions And/Or Offsets?**

- Supplemental paid sick leave under this ordinance runs concurrently with paid sick leave under the Families First Coronavirus Response Act (FCCRA) and Executive Order N-51-20 (Food Sector Workers Supplemental Paid Sick Leave). However, supplemental paid sick leave under this ordinance is **in addition to** California/Los Angeles-mandated paid sick leave.

- If an employer has already provided paid leave since March 31, 2020 for COVID-19-related purposes, any hour will be offset against the 80-hour requirement. For example, if an employer has already provided an employee five hours of paid leave for COVID-19 purposes post-March 31, 2020, the employee would only be obligated to provide 75 hours to a full-time employee under this ordinance.

### **What Are The Penalties For Noncompliance?**

The bill clearly states that employers cannot retaliate against employees who request and/or take supplemental paid sick leave. Additionally, employees can bring actions against their employer in the State of California and be awarded:

1. reinstatement, if they were terminated;
2. backpay and supplemental paid sick leave that was unlawfully withheld (calculated at the employee's average rate of pay); and
3. other legal or equitable relief the court may deem appropriate.

If an employee prevails against an employer, the court can also award attorneys' fees and costs.

### **Expiration**

This order is set to expire on December 31, 2020 unless otherwise ordered by the Board of Supervisors.

### **Conclusion**

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Los Angeles office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

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*This Legal Alert provides an overview of a specific county law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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