

# NEW CALIFORNIA SUPPLEMENTAL PAID SICK LEAVE LAW **NON-FOOD SECTOR EMPLOYERS OF OVER 500 EMPLOYEES**

California recently enacted AB 1867, codified in Labor Code section 248.1. The purpose of the law was to fill in the gaps left by the Federal Families First Coronavirus Response Act ("FFCRA"). The law was enacted and effective on September 9, 2020, but employers were given until September 19, 2020 to comply. Here's what you need to know:

## **SEPARATE**

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This sick leave is separate and apart from your existing paid sick leave.

## **IMMEDIATE**

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All employees are entitled to this leave immediately upon hiring.

## **EMPLOYEES ONLY**

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Independent contractors are not covered under this law.

## **NO DOCTOR'S NOTE**

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The leave must be provided even in the absence of a doctor's note.

## **COVERED LEAVES**

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The following leaves are covered:

1. The covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19. (ex. The county in which work is being performed issues Public Health Orders that mandates isolation or quarantine.)

2. The covered worker is advised by a healthcare provider to self-quarantine or self-isolate due to concerns related to COVID-19. (ex. Your Safety Coordinator tests positive for COVID-19 and is advised by a medical professional not TO return to work until 72 hours after being symptom free.)
3. The covered worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19. (ex. If you have one worker in a crew test positive and through contact tracing the hiring entity identifies 4 other individuals who came in contact with that worker and ask them to self-quarantine. Those 4 individuals would be entitled to the supplemental pay while off work.)

## RATE OF PAY

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Employees are paid the greater of the following:

1. The employee's regular rate of pay for the last pay period (including any collectively bargained pay rate)
2. The state minimum wage
3. Or the local minimum wage. The employer need not pay more than \$511 a day or \$5,110 in the aggregate.

## NOTICE REQUIREMENTS

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Poster and Paystubs

1. All employers must post and distribute the required notice poster to employees. This poster is found in the first resources link.
2. Employer must provide the amount of available supplemental paid sick leave on the employee's wage statement (paystub) or in a separate writing on designated pay days.

## CALCULATION OF AVAILABLE SUPPLEMENTAL LEAVE

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After each pay period, the employer must calculate and disclose on each employee's paystub the total amount of available supplemental sick leave. This number may fluctuate up or down based on the number of hours the employee has worked. For these purposes, it is permissible for an employee's supplemental sick leave bank to be reduced from paycheck to paycheck based on hours worked. So, while this number is tracked each pay period, an employee's total amount of accrued time is ultimately determined as of the date the employee exercises his or her right to take the leave and will have to be recalculated at that time to ensure the allowed leave time is accurate.

1. Full time—If an employee is classified as a full-time employee or worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the employee took supplemental paid sick leave, the employee is entitled to 80 hours of leave.
2. Part time—If the employee has a normal weekly schedule, the employee is entitled to the total number of hours the employee is normally scheduled to work for the employer over two weeks.
3. Variable hours and have worked for 6 months or more—If the employee works a variable number of hours, the employee is entitled to 14 times the average number of hours the employee worked each day for the employer in the six months preceding the date the employee took supplemental paid sick leave.

TOTAL # OF HOURS  
WORKED DURING  
PRECEDING 6-MONTHS

**520**  
HOURS

TOTAL # OF  
CALENDAR DAYS IN  
6-MONTH PERIOD

**182**  
DAYS

AVERAGE # OF HOURS WORKED  
EACH DAY IN 6-MONTH PERIOD

**520** ÷ **182** = **2.857**  
HOURS                      DAYS                      HOURS

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PAID SICK LEAVE ENTITLEMENT

**2.857** x **14** = **40**  
HOURS                      HOURS

4. Variable hours and have worked between 14 days and 6 months—If the employee has worked for the employer over a period of fewer than 6 months but more than 14 days, this calculation instead must be made over the entire period the employee has worked for the employer. This means the total number of days, not just days worked. For example:

TOTAL # OF HOURS  
WORKED DURING  
PRECEDING 6-MONTHS

**120**  
HOURS

TOTAL # OF  
CALENDAR DAYS IN  
6-MONTH PERIOD

**60**  
DAYS

AVERAGE # OF HOURS WORKED  
EACH DAY IN 6-MONTH PERIOD

**120** ÷ **60** = **2**  
HOURS      DAYS      HOURS

COVID-19 SUPPLEMENTAL  
PAID SICK LEAVE ENTITLEMENT

**2** × **14** = **28**  
HOURS      HOURS

5. Variable Hours and have worked fewer than 14 days—For those employees who have worked for employer over a period of 14 days or fewer, the employee is entitled to the total number of hours the employee has worked for the employer. For example:

TOTAL # OF HOURS  
WORKED DURING  
THE 2-WEEK PERIOD

7  
HOURS

TOTAL # OF  
CALENDAR DAYS IN  
A 2-WEEK PERIOD

14  
DAYS

AVERAGE # OF HOURS WORKED  
EACH DAY IN A 2-WEEK PERIOD

7 ÷ 14 = .5  
HOURS DAYS HOURS

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.5 × 14 = 7  
HOURS HOURS HOURS

## ADDITIONAL RESOURCES

Required Poster:

[HTTPS://WWW.DIR.CA.GOV/DLSE/COVID-19-NON-FOOD-SECTOR-EMPLOYEES-POSTER.PDF](https://www.dir.ca.gov/dlse/covid-19-non-food-sector-employees-poster.pdf)

DIR Fact Sheet:

[HTTPS://WWW.DIR.CA.GOV/DLSE/FAQ-FOR-PSL.HTML](https://www.dir.ca.gov/dlse/faq-for-psl.html)

IF YOU HAVE QUESTIONS PLEASE REACH OUT  
TO BRANDON MCKELVEY AT [BRANDON@MEDINAMCKELVEY.COM](mailto:BRANDON@MEDINAMCKELVEY.COM)  
OR CALL US AT 916.960.2211