California Passes Supplemental Paid Sick Leave

California passed a Supplemental Paid Sick Leave law (SPSL) that provides up to 80 hours of COVID-related sick leave for employees in both the public and private sector. The law applies to all California employees who work for employers with more than 25 employees, regardless of location, and covers leaves taken between January 1, 2021 and September 30, 2021. The law took effect immediately on March 19, but had a 10-day grace period. Employers will need to begin granting SPSL, as well as responding to requests for retroactive SPSL pay, on March 29, 2021.
The Department of Industrial Relations has released FAQs that we strongly encourage employers to review as soon as possible.

Reasons for Leave

An employee is entitled to SPSL ("covered") if they are unable to work or telework for any of the following reasons:

Caring for Themselves: The covered employee is subject to a quarantine or isolation period related to COVID-19 by an order or guidelines of the California Department of Public Health, the CDC, or a local health officer with jurisdiction over the workplace, or has been advised by a healthcare provider to quarantine, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.

Caring for a Family Member: The covered employee is caring for a family member who is subject to a COVID-19 quarantine or isolation period or has been advised by a healthcare provider to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.

Vaccine-Related: The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

Amount of Leave

Employees are generally entitled to the following leave amounts:

- Employees who are considered full-time, or who work 40 or more hours per week in the two weeks prior to taking leave, get up to 80 hours.
- Part-time employees with a regular weekly schedule get the number of hours they are normally scheduled to work over two weeks.

Part-time employees with variable schedules get 14 times the average number of hours worked per day over the six months

- Immediately before taking SPSL, or over their entire period of employment if they have worked for fewer than six months.

Rate of Pay

When taking SPSL, non-exempt employees must be paid the *highest* of the following:

- Their regular rate of pay for the workweek in which leave is taken
- The state minimum wage
- Local minimum wage
- Average hourly pay for preceding 90 days (not including overtime pay)

Exempt employees must be paid the same rate of pay they would receive for other paid leave time. Payout for each employee is capped at $511 per day and $5,110 in total for SPSL.

Offsetting an Employee's SPSL Entitlement

The new SPSL allows for employers to "receive a credit" toward the hours owed to an employee *if* they provide or provided the same employee with another form of *COVID-specific* leave after January 1, 2021. The leave provided must have been used for a covered reason under the SPSL law.

For instance, if an employer voluntarily provided federal emergency paid sick leave (EPSL) between January 1 and March 28, 2021, they could subtract the number of hours of federal EPSL an employee took from their SPSL entitlement. Employers can do the same thing with local COVID-specific sick leave entitlements.

The credit does not apply for regular California state sick leave (because it is not COVID-specific) and it does not apply if an employee was allowed or required to use PTO, vacation, or other non-COVID leave to cover their hours.

Retroactive Pay for Leaves Between January 1 and March 28

If a covered employee took leave between January 1, 2021 and March 28, 2021, for one of the qualifying reasons under the new SPSL, but was not paid for this leave in the amount required under this law, they have the right to ask their employer for a retroactive payment equal to the amount required.

After the employee makes the oral or written request, the employer will have until the payday for the next full pay period to pay the retroactive SPSL.

Documentation from Employees

Employees are entitled to take SPSL immediately upon oral or written request and may not be required to provide medical certification or proof of their need for leave. There is an exception if the employer has a reasonable belief (read: objective evidence) that the employee is using leave for an invalid reason.

Mandatory Notice

Employers must post this mandatory workplace poster in a conspicuous location in the workplace. Employers whose workforces are remote, or partly remote, should ensure that those employees see the poster, either by sending it via email or posting it online.

Employers must also notify employees of their available SPSL balance on itemized wage statements or on a separate writing at the time wages are paid. The balance must be listed separately from the regular paid sick leave balance.

Additional Information

It is not entirely clear how this new leave interacts with other leaves, especially federal EPSL. Given that the leaves provided by the Families First Coronavirus Response Act (FFCRA) were intended to be strictly *in addition* to other leaves, and under the original FFCRA rules employees could not be required to use their FFCRA leave when other leave was available, there is not a perfectly straight line between offering SPSL and receiving a tax credit, even though it seems that this is what the CA legislature was trying to accomplish.

New guidance from the IRS or DOL will provide clarity around many FFCRA questions and will let you know if and when such guidance becomes available. You will want to check your HR department, HR attorney or contact MOASC.