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California passes coronavirus (COVID-19) supplemental paid sick leave for food sector workers

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On April 16, 2020, California Governor Newsom signed an Executive Order that will give up to two weeks of supplemental paid sick leave for coronavirus-related reasons to certain food sector workers. The goal is to benefit farmworkers, agricultural workers, grocery store workers, workers in fast food chains, and delivery drivers working for employers with 500 or more employees. The governor intends to fill in the gap created by the federal COVID-19-mandated paid leave applicable to employers with fewer than 500 employees.¹

Applicability

The Order applies to exempt “Essential Critical Infrastructure” workers who leave their homes to perform work for a private business, including a Delivery Network Company and Transportation Network Company, that has 500 or more employees in the United States (all employees of a single enterprise and joint employers must be counted together), in the following.

The canning, freezing, and preserving industry

A business or industry that operates for the purpose of canning soups or of cooking, canning, curing, freezing, pickling, salting, bottling, preserving, or otherwise processing any fruits or vegetables, seafood, meat, poultry, or rabbit product, when the purpose of such processing is the preservation of the product, and including all incidental operations. [For a full definition, see IWC Wage Order 3-2001 § 2(B).]

Industries handling products after harvest

A business or industry operated for the purpose of grading, sorting, cleaning, drying, cooling, icing, packing, dehydrating, cracking, shelling, candling, separating, slaughtering, pickling, plucking, shucking, pasteurizing, fermenting, ripening, molding, or otherwise preparing any agricultural, horticultural, egg, poultry, meat, seafood, rabbit, or dairy product for distribution, and including all incidental operations. [For a full definition, see IWC Wage Order 8-2001 § 2(H).]

¹ For more about the federal law, see our alert, [“Families First Coronavirus Response Act: What employers need to know about the COVID-19 paid leave law.”](#)

Industries preparing agricultural produce for market, on the farm

Any operation performed in a permanently fixed structure or establishment on a farm or on a moving packing plant on the farm for the purpose of preparing agricultural, horticultural, egg, poultry, meat, seafood, rabbit, or dairy products for market when such operations are done on the premises owned or operated by the same employer who produced the products, and including incidental operations. [For a full definition, see IWC Wage Order 13-2001 § 2(H).]

Anyone employed in an agricultural operation

Includes the sowing and planting of any agricultural or horticultural commodity; the care and harvesting of any agricultural or horticultural commodity; the raising, feeding, and management of livestock; and the harvesting of fish, among other things. [For a full definition, see IWC Wage Order 14-2001 § 2(D).]

Anyone who works for an employer operating a food facility

Includes an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including an operation where the food is consumed on the premises.

Anyone who delivers goods for or through a food facility

Collectively referred to as “Food Sector Worker” or “Worker” in this alert.

Qualifying uses

A Food Sector Worker (as defined above) may use the leave for one of the following reasons:

- The worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- The worker is advised by a healthcare provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- The worker is prohibited from working by their employer due to health concerns related to the potential transmission of COVID-19.

Leave entitlement

The leave may involve the following amounts of time.

- 80 hours of leave if (a) the employer considers the Food Sector Worker to work “full-time” or (b) the Food Sector Worker worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date of the leave.
- For an employee who does not meet the requirements in (1), then: (a) for a Food Sector Worker with a normal schedule, the total number of hours the Food Sector Worker is normally scheduled to work over two weeks; or (b) for a Food Sector Worker with a variable schedule, 14 times the average number of hours the Food Sector Worker worked each day for the employer in the six months preceding the leave.

Rate of pay

The Food Sector Worker must be paid his or her regular rate of pay (as paid in the last pay period), the state’s minimum wage, or local minimum wage, whichever is higher. The amount is capped at \$511 per day and \$5,110 in the aggregate.

Employee request for leave

The Food Sector Worker must make an oral or written request for the leave.

Effective dates

This Order is effective immediately throughout the pendency of any statewide stay-at-home orders, except that a Food Sector Worker on the COVID-19 leave when the stay-at-home orders expire will be allowed to complete and take the full amount of leave.

Model notice

By April 23, 2020, the Labor Commissioner shall make a model notice available. Covered employers must post the notice at the workplace or, if the workers do not frequent the workplace, the employer must disseminate the notice through electronic means, such as email.

In addition to regular paid sick leave

This COVID-19 leave is in addition to the California Paid Sick Leave in existence (and other government-provided leaves, such as the FMLA).

Not in addition to equivalent sufficient paid sick leave already provided by covered employer

If a covered employer provides Food Sector Workers with paid leave that would compensate the employee at the same or greater amount as described above for the reasons provided above, then the covered employer will not be required to provide this state-mandated COVID-19 leave.

Other leaves

The employer cannot require the Food Sector Worker to use any other paid or unpaid leave, personal time off (PTO), or vacation time before the Food Sector Worker uses this leave.

Enforcement mechanism

The Labor Commissioner shall enforce the provisions of this COVID-19 Supplemental Paid Sick Leave. A Food Sector Worker may file a complaint with the Labor Commissioner. The principles of the California Paid Sick Leave (Labor Code, Section 249) apply to this leave.

City of Los Angeles COVID-19 supplemental sick leave

If you are an employer with 500 or more employees within the City of Los Angeles or with 2,000 or more employees within the U.S., in any industry, the City of LA also mandates supplemental COVID-19 paid sick leave for employees working within the city of up to 80 hours for full-time employees or an amount no greater than the employee's average hours for a two-week pay period for the following uses or reasons: (1) time off due to employee's COVID-19 infection or self-isolation; (2) employee of 65 years or older or with an underlying condition; (3) employee needs to care for a family member who is required to self-isolate; or (4) employee needs to provide care for a senior family member or child whose school or care center is closed.

Several employers are exempt from this mandate, including: (1) emergency and health services personnel; (2) critical parcel delivery services; (3) employers that already provide generous leave

(minimum of 160 hours of paid leave annually); (4) new businesses; (5) government; and (6) closed businesses (closed or not operating for a period of 14 days).

Handwashing requirement

The Executive Order further expanded handwashing requirements under California's Retail Food Code to instruct food facilities to permit their workers to wash their hands every 30 minutes and additionally as needed.

For more information on the content of this alert, please contact our [Coronavirus Response Team](#), your Nixon Peabody attorney, or:

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