

## CA Supplemental Paid Sick Leave - SPSL

California has 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 employees who work for employers with more than 25 employees and covers leaves taken between January 1, 2021 and September 30, 2021.

This law took effect immediately on March 19th, but included a 10-day grace period. Employers need to begin providing leave under this law beginning Monday, 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 if they are unable to work or telework for any of the following reasons:

- **Caring for themselves:** If the 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, 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:

- Full time employees get up to 80 hours (though full-time firefighters may be entitled to more).
- 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 past 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 is limited to \$511 per day and \$5,110 in total, per employees, 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. 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 request, the employer will have until the payday for the next full pay period to pay the retroactive 2021 COVID-19 SPSL. On that payday, the employer must also provide accurate notice on the itemized wage statement of how many 2021 COVID-19 Supplemental Paid Sick leave hours remain available to the covered employee.

### **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.

### **Interaction with FFCRA Leaves (EPSL, EFMLA)**

**Does FFCRA paid leave provided on or after January 1, 2021 count toward an employer's obligation to provide California SPSL?** Generally, yes. According to the DIR's FAQs from California's Department of Industrial Relations (DIR), if an employer voluntarily provided COVID-19 related paid sick leave after January 1, 2021, such leave can be credited toward an employers' obligations to provide leave under the 2021 SPSL law, as long as the payment meets the requirements in the law. For example, an employer may have already voluntarily provided a covered employee with emergency paid sick leave (EPSL) or emergency family and medical leave (EFMLA) between January 1, 2021, and March 28, 2021.

For an employer to receive a credit for those sick leave hours that the employer voluntarily paid, the following must apply (see the cited FAQs [here](#)):

- The leave taken by the covered employee and paid by the employer must have been for one of the qualifying reasons under the 2021 COVID-19 Supplemental Paid Sick Leave Law (see FAQ 4);
- To pay for this other supplemental benefit, the employer did not require the covered employee to use any other paid leave or paid time off (such as vacation or CA Sick Leave) under a policy that is not specific to COVID-19; and
- The employer paid for the leave taken at a rate equal to or greater than what is required under the 2021 COVID-19 Supplemental Paid Sick Leave law (see FAQs 12-15).

- If the employer paid for the leave taken at a lesser rate than what is required under the 2021 COVID-19 Supplemental Paid Sick Leave law, then the employer may voluntarily make a retroactive payment to make up the difference between what was paid and what is required under the 2021 COVID-19 Supplemental Paid Sick Leave law, or *must* make the payment if a covered employee makes a written or oral request for it on or after March 29, 2021. The retroactive payment must then be made by the payday for the next full pay period after the employee makes the request.

**Can we run FFCRA and California SPSL concurrently and claim the FFCRA tax credit for this paid leave?** The [DOL's FFCRA FAQs](#) state that EPSL is an additional paid leave entitlement to any paid sick leave that an employee is entitled to under state law ("paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy"). In the absence of updated guidance, it does not appear that these leaves can be run concurrently.

Also, under current guidance, employers may not *require* an employee to use FFCRA leave. If an employee wants to use California SPSL, as opposed to FFCRA leave, the employee will have a right to do so. However, if an employee requests leave, we think it would be acceptable to ask them to use FFCRA first since you will get a tax credit for it (sharing that information will likely encourage the employee to select FFCRA). Most employees likely won't care about the type of leave they use, as long as it's easy and paid. However, employers should be aware of this technicality if an employee makes such a request.

Future guidance from the IRS or DOL *may* indicate that employers can require use of FFCRA leave before other leaves or allow for it run it concurrently with other paid leaves. We don't know how likely that is, but if it happens, we will let employers know.