



California Requires COVID-19 Supplemental Paid Sick Leave For Food Sector Workers

April 21, 2020 | [Employee Leave, Labor And Employment](#)

California's Gov. Gavin Newsom has issued Executive Order N-51-20, which requires hiring entities to provide up to 80 hours of supplemental paid sick leave related to COVID-19 to eligible food sector workers. The executive order extends COVID-19 Supplemental Paid Sick Leave benefits to workers who are ineligible for paid sick leave under the federal Families First Coronavirus Response Act and expands handwashing requirements to prevent and mitigate the spread of COVID-19.

How May a worker Use COVID-19 Supplemental Paid Sick Leave?

An eligible worker in the food sector is entitled to COVID-19 Supplemental Paid Sick Leave if the worker is unable to work because they:

- are subject to a Federal, State or local quarantine or isolation order;
- have been advised by a health care provider to self-quarantine or self-isolate due to COVID-19 related concerns; or
- have been prohibited from working because of concerns related to potential COVID-19 transmission.

Who is a "Food Sector Worker?"

For purposes of the executive order, a "Food Sector Worker" meets all of the following criteria:

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1. The person satisfies any of these requirements if they:

- work in one of the industries or occupations detailed in Industrial Welfare Commission Wage Orders 3, 8, 13 or 14 (e.g., agriculture, food processing), or
- work for a hiring entity that operates a food facility, as defined under state law (e.g., restaurants, grocery stores), or
- delivers food from a food facility for or through a hiring entity

2. The person is an Essential Critical Infrastructure Worker exempt from Executive Order N-33-20 or any other statewide stay-at-home order; and

3. The person leaves their home or other residence to perform the work for or through the hiring entity.

Who is a “Hiring Entity?”

Under the executive order, a “Hiring Entity” is any sole proprietorship, corporation or private entity, specifically including any delivery network company and any transportation network company, employing at least 500 people in the United States.

Do Any Independent Contractors or Gig Workers Receive COVID-19 Supplemental Paid Sick Leave?

The executive order uses the terms, “Food Sector Worker” and “Hiring Entity” rather than “employee” and “employer.” It also expressly identifies delivery network companies and transportation network companies when describing a type of hiring entity. Finally, the executive order states that, when construing it for purposes of the California Labor Code sections relating to paid sick days, “Food Sector Workers shall be considered ‘employees,’ any Hiring Entity shall be considered an ‘employer,’ and the Executive Order considered part of the article in which the [California] Labor Code Sections are codified.” Thus, COVID-19 Supplemental Paid Sick Leave arguably applies to gig economy workers who otherwise fall within the executive order.

What is the Pay Rate for COVID-19 Supplemental Paid Sick Leave?

The COVID-19 Supplemental Paid Sick Leave pay rate is the regular pay rate for the last pay period, the state minimum wage rate, or the applicable local minimum wage, whichever is highest. The maximum daily and maximum per worker aggregate amounts of COVID-19 Supplemental Paid Sick Leave are \$511 and \$5,110, respectively.

What is the Interplay Between COVID-19 Supplemental Paid Sick Leave and Other Paid Leave?

A hiring entity need not provide COVID-19 Supplemental Paid Sick Leave if, as of April 1, 2020, the hiring entity provides food sector workers with a supplemental and at least equal sick leave benefit for any COVID-19 related reason.

A hiring entity may *not* require that a worker use other paid or unpaid leave

before using COVID-19 Supplemental Paid Sick Leave. (The latter is in addition to any paid sick leave that may be available to the worker under California Labor Code section 246.)

When and for How Long is COVID-19 Supplemental Paid Leave Available?

Leave must be available for immediate use. The hiring entity's obligation to provide COVID-19 Supplemental Paid Sick Leave continues during the pendency of any statewide stay-at-home orders of the State Public Health Officer.

A worker who has commenced COVID-19 Supplemental Paid Sick Leave when any statewide stay-at-home orders expires may use the full amount of leave to which s/he would have been entitled under the executive order.

Handwashing Breaks

The executive order specifies that employers must permit employees working in a food facility to wash their hands every 30 minutes and additionally, as needed.