California Provides COVID-19 Paid Sick Leave for Food Sector Workers (US)

Wednesday, April 29, 2020

In a move that mirrors the efforts of several local California communities to fill gaps not otherwise addressed by the federal Families First Coronavirus Response Act (FFCRA), California Governor Newsom issued Executive Order N-51-20 on April 16, 2020 (“Order”). Specifically, the Order provides COVID-19 related paid sick leave for “food sector workers” throughout the state who work for larger employers.

Covered “Food Sector Workers”

The Order applies to employers with 500 or more employees located anywhere in the United States pursuant to the FFCRA regulations. This includes any Delivery Network Company (as defined by the Revenue and Taxation Code) and any Transportation Network Company (as defined by the Public Utilities Code) with 500 or more employees anywhere - not just within California.

The Order includes a broad range of employees in the food sector across multiple industries, who: (1) must leave his/her home or place of residence to perform work and (2) be considered an “essential critical infrastructure worker” not subject to any statewide stay-at-home order. The order includes workers in the following food sector industries:
Employees engaged in the canning, freezing, and preserving industry, as defined under Wage Order 3-2001 section 2(B).
Employees engaged in industries handling products after harvest, as defined under Wage Order 8-2001 section 2(H).
Employees engaged in industries preparing agricultural products for market, on the farm, as defined under Wage Order 13-2001 section 2(H).
Employees employed in an agricultural occupation, as defined under Wage Order 14-2001 section 2(D).
Employees who work for an employer that operates a food facility, as defined under Health and Safety Code section 113789 (a)-(b).
Employees who deliver food from a food facility, as defined under Health and Safety Code section 113789 (a)-(b).

Eligibility for Supplemental Paid Sick Leave

Eligible employees are entitled to take supplemental paid sick leave if the employee is unable to work because:

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

Supplemental Sick Leave Entitlements

Although supplemental paid sick leave is available to a broad range of food sector workers, the hours entitlement can vary wildly depending on whether the worker is full-time and/or works a regular or variable schedule. Full-time food sector workers are entitled to 80 hours of supplemental paid sick leave. Full-time is either an employee who is (1) defined by the employer as “full-time” or (2) who worked an average of 40 hours in the two weeks preceding the date the employee takes the sick leave.

Employees who do not qualify as full-time but maintain a regular weekly schedule, are entitled to the same hourly amount of leave as the employee’s normal weekly schedule over a two-week period.

Employees who do not qualify as either full-time or regular scheduled, are entitled to an hourly sick leave amount of 14 times the average number of hours they worked each day for the employer in the six months preceding the date the leave is taken (or during their entire employment if the employee has worked for less than six months).

This supplemental paid sick leave is in addition to the sick leave available to employees under the California state paid sick leave law. Unlike other leave laws, employees have the discretion to determine how many hours of supplemental paid sick leave they want to use and employers may not require an employee to exhaust other leave entitlements before using supplemental paid sick leave under this Order.
Importantly, employers are not required to provide supplemental paid sick leave under this Order if the employer, as of April 16, 2020, provides paid leave to the employee for these COVID-19 reasons, and the benefit is equal to or exceeds the value of the supplemental paid sick leave under this Order.

**Rate of Pay for Supplemental Paid Sick Leave**

Food Sector Workers taking supplemental paid sick leave under this Order must be paid at the greater of the following:

- The employee’s regular rate of pay for the last pay period before the leave is taken;
- The state minimum wage; or
- The local minimum wage.

Mirroring the FFCRA, the total amount paid is capped at no more than $511 per day and $5,110 in the aggregate over the period the order is in effect.

**Notice and Other Requirements**

The Labor Commissioner has provided a model supplemental sick leave notice for employers to post. If food sector workers do not frequent the workplace, the employer may transmit the notice to the employees electronically.

In addition to the paid sick leave requirements, employees working in food facilities must be permitted to wash their hands every 30 minutes and more frequently, as needed.

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