



**SDHR** FORUM

# COVID-19 at Work

**PRESENTED BY**

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**Ryan H. Nell** is an employment attorney responsible for representing California employers statewide in both counseling and comprehensive litigation support. With the ever-changing landscape of California and federal employment law, Ryan prides himself on assisting clients in staying ahead of the curve in an effort to avoid legal trouble before it arises. He has extensive experience representing clients in harassment, retaliation, and discrimination matters, as well as large-scale wage and hour lawsuits.

Ryan speaks regularly on a wide range of topics aimed at assisting California employers in the avoidance of legal trouble before it arises, and his work in the field has led to his recognition by *Best Lawyers: Ones to Watch 2021* and as a Rising Star by *San Diego Super Lawyers*®.

# California Supplemental Paid Sick Leave

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- Provides up to 80 hours of paid sick leave benefits to employees of health care providers, emergency responders, and businesses with 500 or more workers
- Qualifying reasons for leave:
  1. The worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
  2. The worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
  3. The worker is prohibited from working by the worker's hiring entity due to health concerns related to the potential transmission of COVID-19
- Leave is paid at regular rate and is capped at \$511 per day/\$5,110 total
- No tax credit

# California Supplemental Paid Sick Leave

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- If the employer offered supplemental benefits that are just as good, the employer can credit those benefits toward its CA SPSL obligations
- SPSL balance must appear on wage statement

Law	Covered Employer	When Employee Can Use PSL	Qualifying Reason for PSL	Amount of PSL	Compensation for PSL
FFCRA	1-499 employees	Immediately upon hire	<ol style="list-style-type: none"> <li>Employee subject to quarantine or isolation order</li> <li>Employee advised to self-quarantine</li> <li>Employee is experiencing symptoms and is getting tested</li> <li>Employee is caring for someone advised to self-quarantine</li> <li>School or childcare provider of employee's child is closed or unavailable</li> <li>Employee has other illness specified by Sec'y of HHS</li> </ol>	<p>Full time employees: 80 hours</p> <p>Part time workers: average number of hours worked over 2 weeks</p>	<p>Reasons 1, 2, and 3:</p> <ul style="list-style-type: none"> <li>Greater of regular rate, state MW, and local MW; and</li> <li>Pay is capped at \$511 per day and \$5,110 total</li> </ul> <p>Reasons 4, 5, and 6:</p> <ul style="list-style-type: none"> <li>Greater of regular rate, state MW, and local MW; and</li> <li>Pay is capped at \$200 per day and \$2,000 total</li> </ul> <p>Tax credits available</p>
CA Supplemental PSL	500+ employees; employers of health care providers and emergency responders (i.e., 1-499 employees and can exclude employees from FFCRA coverage)	Immediately upon hire	<ol style="list-style-type: none"> <li>Worker subject to quarantine or isolation order</li> <li>Worker advised to self-quarantine or self-isolate</li> <li>Worker prohibited from working by hiring entity</li> </ol>	<p>Full time workers: 80 hours</p> <p>Part time workers:</p> <ul style="list-style-type: none"> <li>number of hours worked in 2 weeks, if regular schedule</li> <li>14 * average number of hours worked per day in last 6 months, if variable schedule</li> </ul>	<p>Greater of regular rate, state MW, and local MW; and pay is capped at \$511 per day and \$5,110 total</p> <p>No tax credits available</p> <p>However, if employer already provided benefits that are equal to or greater than CA Supplemental PSL benefits and employees could take paid time off for reasons 1-3, then no additional benefits need be provided</p>
CA PSL	1+ employees	On 90 <sup>th</sup> day of employment	<ol style="list-style-type: none"> <li>Diagnosis, care, or treatment of existing health condition of, or preventive care for, employee or family member</li> <li>Domestic violence, sexual assault, stalking</li> </ol>	3 days (or 24 hours) per year	<p>Regular rate</p> <p>No tax credits available</p>

Remember to consider local paid sick leave ordinances and existing vacation/PTO benefits. FFCRA and CA Supplemental PSL benefits are in addition to already existing benefits.

# Expanded California Family Rights Act

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- Applies to any employer with 5 or more employees
- Expands list of family members for whom family care leave may be taken
  - Spouse, parent, child, grandparent, grandchild, sibling
- Expands reasons for taking family care leave
  - Adds leave for a qualifying exigency relating to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States
- Eliminates “key employee” exception
- Where both parents are employed by the employer, each parent is entitled to 12 weeks of baby bonding leave
- “The aggregate amount of leave taken under [CFRA] or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period.” (Gov. Code, §12945.2(p).)

# AB 685



# Notification Requirements: AB 685

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- Within 1 business day of receiving a “notice of potential exposure” to COVID-19, the employer must provide written notice:
  - To employees who were at the worksite during the infectious period
    - They may have been exposed
    - What COVID-related benefits they may be entitled to
    - What disinfection and safety protocols the employer will implement
  - To employee representatives
    - That employees may have been exposed
    - What COVID-related benefits they may be entitled to
    - What disinfection and safety protocols the employer will implement
  - To employers of subcontracted employees who were at the worksite during the infectious period
    - That employees may have been exposed
    - What disinfection and safety protocols the employer will implement

# Notification Requirements: AB 685

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- Within 48 hours of notice that the number of cases meets the State Department of Public Health's definition of a COVID-19 outbreak, the employer must report the following information to the local public health agency:
  - Names, number, occupation, and worksite of employees who are “qualifying individuals”
  - The business address and NAICS code of the worksite where the employees work
- A “COVID-19 outbreak” in a non-healthcare or non-residential congregate setting occurs when there are 3 or more lab-confirmed cases of COVID-19 among workers who live in different households within a 2-week period

# SB 1159



# Notification Requirements: SB 1159

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- Within 3 business days of knowing (or having reason to know) that an employee has tested positive, the employer must report to the workers' comp claims administrator:
  1. That an employee tested positive;
  2. The date of the positive test;
  3. The specific address(es) of the employee's specific place of employment during the 14-day period preceding the date of the positive test; and
  4. The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment.

# Questions?

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