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LEGAL UPDATE

March 24, 2021

To: Superintendents/Presidents/Chancellors, Member
Community College Districts

From: Nancy L. Klein, Senior Associate General Counsel *Nancy Klein*

Subject: Supplemental Paid Sick Leave for Qualifying Reasons Related to
COVID-19 (SB 95)
Memo No. 08-2021(CC)

Beginning March 29, 2021, Labor Code section 248.2 requires employers with more than 25 employees to provide Supplemental Paid Sick Leave (“SPSL”) to employees who are unable to work or telework for any of the following Qualifying Reasons (“QR”):

1. Employee is subject to a COVID-19 quarantine or isolation period as specified in an order or guideline by the California Department of Public Health (“CDPH”), federal Center for Disease Control (“CDC”) or a local health officer with jurisdiction over the workplace.
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. Employee is attending an appointment to receive a COVID-19 vaccine.
4. Employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.
5. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. Employee is caring for a family member¹ who is subject to an order or guidelines described in QR 1 or 2, above.

¹ “Family member” means any of the following:

- (1) A **child**, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
- (2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- (3) A spouse.
- (4) A registered domestic partner.
- (5) A grandparent.
- (6) A grandchild.
- (7) A sibling.



7. Employee is caring for a child² whose school, place of care is closed or otherwise unavailable for reasons related to COVID-19 *on the premises*. (Lab. Code 248.2(b)(1))

LEAVE ALLOTMENT

The number of SPSL hours a “covered employee”³ is entitled to is based on the number of hours the employee works or is scheduled to work. (Lab. Code 248.2(b)(2))

- 40-Hour Employees: Up to 80 hours for covered employees who are full time and scheduled to work at least 40 hours per week in the two weeks preceding the date the employee took SPSL leave.
- Less than 40-Hour Employees: The total number of hours the covered employee is normally scheduled to work for the employer over two weeks.
- Employees with a Variable Schedule for Six or More Months: 14 times the average number of hours the covered employee worked each day in the six-month period preceding the date the covered employee took SPSL.
- Employees with a Variable Schedule for More than 14 Days and Less than Six Months: The average number of hours the covered employee worked over the entire period the covered employee has worked for the employer.
- Employees with a Variable Schedule for 14 or Fewer Days: The total number of hours the covered employee works a variable schedule over a period of 14 or fewer days. (Lab. C. 248.2(b)(1))

SPSL is in addition to paid leave an employee is entitled to receive under the Healthy Workplaces Healthy Families Act. (Lab. C. 248.2(b)(2)(D))

RIGHT TO IMMEDIATE USE OF SPSL

Covered employees are entitled to use SPSL immediately upon “oral or written request” before use of other paid or unpaid leave provided by the employer. (Lab. C. 248.2(b)(2)(e) and (4)) When covered employees are excluded from the workplace pursuant to the Title 8 Emergency Temporary Standards due to COVID-19 exposure in the workplace⁴, an employer may require covered employees to first exhaust their SPSL to satisfy the employer’s Title 8 obligation to continue compensation and benefits during the exclusion period. (Lab. C. 248.2(b)(5))

RATE OF COMPENSATION

Non-Exempt Employees: SPSL must be compensated at the highest of:

(Lab. C. 245.5(c), 248.2(b)(1)(F) – Healthy Families Healthy Workplaces Act Definitions)

² See footnote. 1, paragraph 1. “Child” is not restricted by age or require that a child over 18 be incapable of self-care.

³ “**Covered employee**” means an employee who is unable to work or telework for an employer because of one of the QRs. (Lab. C. 248.2(a)(3))

⁴ “COVID-19 exposure” means being within six (6) feet of a COVID-19 case for a cumulative total of 15 or more minutes within a 24-hour period.



1. The covered employee's regular rate of pay for the work week the covered employee uses SPSL;
2. The rate calculated by dividing the covered employee's total wages, not including overtime, by the employee's total hours worked in full pay periods of the prior 90 days of employment;
3. The state minimum wage; or
4. The local minimum wage to which the covered employee is entitled.

Exempt Employees: The rate calculated in the same manner as the employer calculates other forms of paid leave. (Lab. Code 248.2(b)(3)(A))

MAXIMUM COMPENSATION

Employers are not required to pay more than \$511 per day or \$5,110 in the aggregate to a covered employee. (Lab. Code 248.2(b)(3)(C))

A covered employee who has reached the maximum compensation under section 248.2 may elect to use other available paid sick to receive full compensation. (Lab. C. 248.2(b)(3)(C))

OTHER EMPLOYER-PROVIDED SUPPLEMENTAL BENEFITS

If an employer has paid an employee another supplemental benefit for leave taken after January 1, 2021, for one of the QRs, at a rate at least equal to the rate required under section 248.2, the employer may count the hours of the other supplemental benefits toward the total number of SPSL hours the employer is required to provide. (Lab. C. 248.2(c)) Some districts and county offices of education have provided such supplemental benefits by policy or memorandum of understanding with exclusive representatives. If the rate paid was not at least equal to the rate required by section 248.2, see RETROACTIVE APPLICATION, below.

EFFECTIVE PERIOD/RETROACTIVE APPLICATION OF SECTION 248.2

Section 248.2 goes into effect on March 29, 2021, and is retroactive to January 1, 2021.

If an employer did not compensate an employee who took leave after January 1, 2021, for one of the specified QRs, at a rate at least equal to the rate required by section 248.2, "upon the oral or written request of the employee, the employer shall provide the covered employee with a retroactive payment that provides for such compensation." (Lab. C. sec. 248.2(e)(2)(A)) Payment is due "on or before the payday for the next full pay period after the oral or written request of the covered employee." (Lab. C. 248.2(e)(2)(C))

The number of hours paid retroactively "shall count toward the total hours of [SPSL] that the employer is required to provide [under section 248.2]." (Lab. C. 248.2(e)(2)(B))

Section 248.2 expires on September 30, 2021, "except that a covered employee taking [SPSL] at the time of expiration...shall be permitted to take the full amount of [SPSL] to which the covered employee otherwise would have been entitled. (Lab. C. sec. 248.2(f))



NOTICE TO EMPLOYEES

Employers are required to display a poster in a conspicuous location of employees' rights to accrue, request, and use paid sick days, the amount of sick days, and the terms of use of paid sick days. The California Labor Commissioner will make a model notice available on or before March 26, 2021.

For employees who do not frequent the workplace, notice may be given by email.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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