
New California Law Provides COVID-19 Supplemental Paid Sick Leave for Food Service Workers, Health Care Providers and Emergency Responders

October 15, 2020
Number 71

Written by:

Scott G. Cross
Partner
Fresno

Ryan M. Harrison, Sr.
Associate
Sacramento

Recently enacted Assembly Bill (AB) 1867 created new Labor Code sections 248 and 248.1 which require employers to provide additional COVID-19 paid sick leave (CPSL) to food service workers, health care providers, and emergency responders. AB 1867 went into effect immediately upon being signed on September 9, 2020.

Sections 248 and 248.1 codified Governor Newsom's prior Executive Order (EO) N-51-20 pertaining to CPSL, and also added additional provisions and clarifications.

Labor Code section 248 - Food Sector Worker CPSL

Labor Code section 248 (Section 248) authorizes CPSL for food sector workers who work for any employer with 500 or more employees. Section 248 is retroactive to April 16, 2020, the date Governor Newsom signed EO N-51-20, and it will remain in effect until December 31, 2020, or until the federal Emergency Paid Sick Leave Act, Public Law 116-127, expires, whichever is later.

Under Section 248, full-time food sector workers are entitled to two weeks (or 80 hours) of CPSL. Part-time food sector workers with a normal weekly schedule are entitled to CPSL in an amount of hours equal to the total number of hours the worker is normally scheduled to work over a two-week period.

CPSL is in addition to other leave entitlements established under existing law, such as paid sick leave. However, any sick leave offered by an employer above and beyond any existing statutory requirements can be used by the employer to satisfy the CPSL amounts required by Section 248.

Under Section 248, an employer must allow a food sector worker to take CPSL time if the worker is:

1. Subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine or self-isolate due to COVID-19-related concerns; or
3. Prohibited from working because of potential COVID-19 transmission.

The employee is not required to provide medical certification in order to access CPSL. CPSL must be provided to the employee upon request so long as the employee's stated reasons qualify.

Section 248 includes anti-retaliation provisions, and requires that the employer track leave time and provide an hours accounting on employee wage statements. Section 248 also requires food sector workers to wash their hands at least every 30 minutes.

Labor Code section 248.1 – Healthcare Workers and First Responders

Labor Code section 248.1 (Section 248.1) authorizes CPSL for healthcare workers and first responders employed by a governmental entity, or a private employer with 500 or more employees. Prior to Section 248.1, an employer could exclude healthcare workers and first responders from accessing CPSL under the federal Families First Coronavirus Response Act (FFCRA). Notably, the FFCRA offers federal employment tax credit, whereas Section 248.1 does not. FFCRA leave satisfies CPSL requirements. Therefore, employers may want to consider voluntarily authorizing CPSL under the FFCRA and exempting themselves from compliance obligations under Section 248.1.

Section 248.1 also takes effect retroactively to April 16, 2020, and will not expire until December 31, 2020, or until the federal Emergency Paid Sick Leave Act, Public Law 116-127, expires, whichever is later.

The time calculation and requirements for healthcare workers and first responders for accessing CPSL are the same as in Section 248, above. However, for fire fighters who are scheduled to work 80 or more hours within a two-week period prior to their taking CPSL, the amount of leave time they are allowed is calculated based upon whatever number of hours they were scheduled to work within those two weeks immediately preceding leave.

Additional Information Pertaining to Both Sections 248 and 248.1

Sections 248 and 248.1 both prohibit employers from requiring an employee to draw from other leave entitlements first before using CPSL. Both provisions require the employee's CPSL to be calculated based upon their highest regular rate of pay. Employers will be required to post new signage in the workplace informing employees of their right to CPSL. And, there is a rebuttable presumption of retaliation for an employee who experiences adverse employment action within 30 days from using CPSL.

Unlike the FFCRA and other local ordinances, employees cannot use CPSL to care for or assist another individual. For example, they cannot use CPSL if their child's school closes, or their childcare provider is unavailable due to COVID-19.

Takeaways

For the foreseeable future, California employers are required to provide two weeks of paid CPSL to food sector workers, healthcare workers, and first responders. The employer is required to provide CPSL upon oral or written request by the employee, and there is a statutory presumption of illegal retaliation if the employee experiences an adverse employment action at or around the time the employee avails themselves of CPSL.

Client News Brief

If you would like more information or have any questions related to CPSL, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

