

AB 1867 - Small Employer Family Leave Mediation and Supplemental Paid Sick Leave Key Points

Following the California Family Rights Act, this bill enforces employers to grant an employee's request of up to 12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave. Furthermore, the bill includes the new COVID-19 supplemental paid sick leave statute for employers with 500 or more employees that is not waivable through collective bargaining. This requirement expires December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act. These provisions would be repealed on January 1, 2024.

The bill's key elements are as follows:

- Employers are required to provide COVID-19 supplemental paid sick leave if employees are unable to perform work because the following:
 - Federal, state, or local quarantine or isolation order related to COVID-19.
 - A health care provider's advice to self-quarantine or self-isolate due to COVID-19.
 - The worker is prohibited from working by their employer due to a potential COVID-19 transmission.
- A covered worker is entitled to 80 hours of COVID-19 supplemental paid sick leave if they meet the following criteria:
 - The covered worker is recognized as a "full time" employee.
 - Was scheduled to work an average of at least 40 hours per week for the employer in the two weeks before the covered worker took COVID-19 supplemental paid sick leave.
- The total number of hours of supplemental paid sick leave a covered worker is entitled to is in addition to any paid sick leave available to the employee.
- The worker can determine how many of the 80 hours of supplemental paid sick leave to use. The employer shall make the supplemental paid sick leave available for immediate use by the covered worker, upon the oral or written request of the worker to the hiring entity.
- Employers are not required to provide workers more than the required 80 hours.
- An equal rate per hour of compensation for COVID-19 supplemental paid sick includes:
 - The employee's regular rate of pay based on their last pay period, including any collective bargaining agreement that applies.
 - The state minimum wage.
 - The local minimum wage to which the covered worker is entitled.
 - Employee shall be compensated for each hour of COVID-19 supplemental paid sick leave at the regular rate of pay to which the worker would be entitled as if the worker had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.



- Employers do not have to pay more than \$511 per day and \$5,110 in total to an employee for COVID-19 supplemental paid sick leave.
- Employers cannot require a worker to use other paid or unpaid leave, paid time off, or vacation time provided by the employer before the employee uses or in lieu of COVID-19 supplemental paid sick leave.
- If employers already provide a worker with a supplemental benefit, such as additional paid leave that compensates the worker in a quantity equal to or greater than the supplemental paid sick leave compensation, then the employer may count the hours of the other paid benefit/leave towards the total number of hours of COVID-19 paid leave they are required to provide.
- If an employer already provided supplemental paid leave between March 4, 2020 but did not compensate the covered worker in an amount equal to or greater than the required amount, the employer may provide additional pay to the employee to satisfy compensation requirements. Furthermore, those hours may count towards the required total number of COVID-19 supplemental paid sick leave hours.
- The requirement to provide COVID-19 supplemental paid sick leave shall take effect not later than 10 days after the date of enactment.
- The requirement to provide COVID-19 paid sick leave expires December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act. However, employees who are taking COVID-19 supplemental paid sick leave during the December 31 deadline will be allowed to take the full amount of paid sick leave they would have been entitled to.
- Examples of article violations and repercussions include the following:
 - If the Labor Commissioner determines that a violation has occurred, they may order any appropriate relief, including reinstatement, backpay, payment of sick days unlawfully withheld, and an additional payment of an administrative penalty to an employee or other person whose rights were violated.
 - If paid sick days were unlawfully withheld, \$250 or the dollar amount of paid sick days withheld multiplied by three, whichever amount is greater, shall be included in the administrative penalty as long as it does not exceed \$4,000.
 - If a violation causes more harm to the employee, such as termination from employment, the penalty shall include \$50 for each day or portion of, not to exceed \$4,000.
 - If an employer does not abide by the penalties, the Labor Commissioner may take any appropriate enforcement action to secure compliance. In addition, the violating employer owes the state a sum of \$50 each day or portion of a day a violation occurs/continues for each employee whose rights were violated.



- An employee or other person may confidentially report to the Labor Commissioner a suspected violation, but the commissioner may disclose that person's name and information if needed for appropriate purposes upon the authorization of that person.
- The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and may be entitled to collect legal or reasonable relief on behalf of the aggrieved.
- Clerical errors such as payroll or written notice errors are not recognized as violations.