

## **Food Sector Workers of Large Employers Qualify for COVID-19 Supplemental Paid Sick Leave**

On April 16, Governor Newsom issued Executive Order N-51-20 providing “COVID-19 Supplemental Paid Sick Leave” for food sector workers who work for a “hiring entity” with 500 or more employees in the United States.

<https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>

Effective immediately, the statewide Executive Order fills a gap left by the federal Families First Coronavirus Response Act (FFCRA), which requires employers of fewer than 500 employees to provide emergency paid sick leave to employees unable to work for COVID-19 qualifying reasons. Despite the intent and purpose of FFCRA, many essential employees in the food sector do not have access to paid sick leave. Executive Order N-51-20 is intended to cure that defect.

### **Which Employers Qualify as “Hiring Entities” Under the Law?**

“Hiring entity” is defined as a private sole proprietorship or private entity that has 500 or more employees in the United States, and includes, but is not limited to any kind of corporation, partnership, limited liability company, limited liability partnership, or any other kind of business enterprise.

### **Which Employees Are Covered?**

The Executive Order applies to food sector workers ranging from agricultural workers, farmworkers, and grocery and fast food workers to delivery workers. To qualify as a food sector worker, the worker must perform work through a hiring entity with more than 500 employee nationwide and:

- Be exempt, as an essential critical infrastructure worker, from the statewide shelter-at-home order (Executive Order N-33-20);
- Perform work for the hiring entity outside the worker’s home; and
- The worker must either:
  - Be employed by an employer covered by one of the following California Industrial Welfare Commission Wage Orders: 3 (canning, freezing, and preserving industry); 8 (industries handling products after harvest); 13 (facilities on a farm that prepare products for market) or 14 (general agricultural occupations); or
  - Work for a “hiring entity” that runs a food facility, which includes grocery stores, fast-food restaurants, and distributions centers; or
  - Deliver food from a food facility or through a hiring entity.

## **What Reasons Qualify An Employee To Take Leave?**

Employers must provide COVID-19 Supplemental Paid Sick Leave if the food sector worker is unable to work due to one of the following reasons::

- The worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- The worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- The worker is prohibited from working by the worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

Note: a hiring entity is not required to provide COVID-19 Supplemental Paid Sick Leave if it provides the worker with a supplemental benefit, such as paid leave, that is payable for the reasons listed above and that would compensate the worker in an amount equal to or greater than the amount the worker would be compensated through taking COVID-19 Supplemental Paid Sick Leave.

## **How Many Hours of Paid Leave Does the Law Provide?**

Food sector workers who are considered by the hiring entity to work full-time, or who work on average at least 40 hours per week in the two weeks before the leave is taken, are entitled to 80 hours of COVID-19 Supplemental Paid Sick Leave.

Part-time food sector workers are entitled to an amount of COVID-19 Supplemental Paid Sick Leave as follows:

- If the worker has a normal weekly schedule, the total number of hours the worker is normally scheduled to over two weeks; or
- If the worker works a variable number of hours, 14 times the average number of hours the worker worked each day for or through the hiring entity in the six months preceding the leave. If the worker worked for fewer than six months, this calculation shall instead be made over the entire period the worker worked for the hiring entity.

Eligible food sector workers are entitled to the highest of: 1) their regular rate of pay for the last pay period; 2) the state minimum wage; or 3) the local minimum wage.

The maximum a hiring entity is required to pay per person is \$511 per day, or \$5,110 in the aggregate for COVID-10 Supplemental Paid Sick Leave.

## **Right to Wash Hands**

The Executive Order requires that any operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level must allow workers to wash their hands every 30 minutes and additionally as needed.

## **Compliance, Enforcement and Notice to Workers**

This Executive Order provides extensive new protections to food sector workers in light of the COVID-19 pandemic. To ensure compliance, Governor Newsom has ordered the Labor Commissioner to enforce the provisions of COVID-19 Supplemental Paid Sick Leave, which constitutes “paid sick days” under Labor Code sections 246(n), 246.5(b)-(c), 247, 247.5, and 248.5. Further, a food sector worker may file a retaliation complaint with the Labor Commissioner pursuant to Labor Code section 98 or 98.7. Notably, all food sector workers are considered “employees,” and any hiring entity is considered an “employer,” for purposes of these Labor Code sections.

Finally, hiring entities are required to display a poster in a conspicuous place that contains information about COVID-1 Supplemental Paid Sick Leave, or disseminate the notice through electronic means if food sector workers do not frequent a workplace. The Labor Commissioner will provide additional guidance on notice requirements by April 23, 2020.