



CAMBRIA COMMUNITY SERVICES DISTRICT

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Emergency Paid Sick Leave Policy

In accordance with the Federal Families First Coronavirus Response Act, the District has revised and adopted the following policy effective July 1, 2021. On March 19, 2021, Governor Newsom signed into law Senate Bill ("SB") 95, codifying Labor Code section 248.2 regarding new obligations on public agency employers to provide COVID-19 Supplemental Paid Sick Leave to employees who are unable to work or telework and have certain enumerated qualifying reasons for such paid leave. SB 95 provides a new employee entitlement to such leave retroactive to January 1, 2021 and effective through September 30, 2021. The urgency legislation will go into effect 10 days after enactment, or on March 29.

I. EMERGENCY PAID SICK LEAVE

(a) Effective July 1, 2021, regular full-time employees for the Cambria Community Services District shall be entitled to up to 80 hours of Emergency Paid Leave for the following reasons:

- (1) The employee is subject to a Federal, State, or Local quarantine or isolation order related to COVID-19;
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2);
- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor

(b) Employees who work less than full time shall receive a prorated amount of hours based on an employee's regular schedule hours for the reasons identified in Section (a) above.

(c) Leave taken as Emergency Paid Leave is in addition to any other leave accrued and does not accrue beyond 80 hours. Unused leave does not carryover for any employees.

(d) Emergency Paid Sick Leave is subject to the following caps:

(1) \$511/Day and \$5,110 in the Aggregate for the Following Employee-Related COVID-19 Absence Reasons

- i. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- ii. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- iii. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(2) \$200/Day and \$2,000 in the Aggregate for the Following Reasons Related to the Employee Taking Leave to Care for an Individual or Son or Daughter

- i. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
- ii. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
- iii. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor

(3) Employees may supplement the two-thirds pay with their accrued leaves to achieve 100% of their regular rate of pay.

(4) The District may deny this leave to any health care provider or emergency responder.

II. EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT:

(a) Eligibility

Effective April 1, 2020, employees are eligible for up to 12 weeks of job-protected Public Health Emergency Leave if the following requirements are met:

- (1) The employee has worked for the District for at least 30 calendar days, (FMLA Sec. 110(a)(1)(A);
- (2) The employee is unable to work (or telework) due to a need to care for the son or daughter (under 18 years of age) who's school or place of care has been closed, or who's child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or local authority, (FMLA Sec. 110(a)(2)(A) & (B)); and
- (3) The employee provided reasonable notice of the need for the leave.
- (4) Protected Health Emergency Leave is a form of FMLA leave and is not in addition to any other FMLA leave.

(b) Paid Leave

The first 10 days of Emergency Family Medical Leave may consist of unpaid leave unless the employee elects to utilize accumulated leaves, including Emergency Paid Sick Leave in section I above. For the remaining 10 weeks, an employee is entitled to paid leave at two-thirds of the employee's regular rate of pay. (FMLA Sec. 110(b).) However, paid leave is subject to a cap of \$200 per day and \$10,000 total.

(c) Restoration to Prior Position

Employees out on Emergency Family and Medical Leave are entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave. (FMLA Sec. 110(d).)

If the District is unable to restore the employee to an equivalent position to the employee's prior position, the District will notify the employee if an equivalent position becomes available within 1-year of either, the date the public health emergency concludes or date which is 12 weeks after the employee started their Emergency Family and Medical Leave, (which ever date is earlier). Notification shall be by regular mail to the employees address on file.

(d) Expiration

The provision of this section shall expire on September 30, 2021 or when the Emergency Family and Medical Leave Expansion Act is no longer effective.

- (e)** Employees shall request leave as soon as practicable and shall certify the need for leave in writing at the time of the request.

III. COVID-19 SUPPLEMENTAL PAID SICK LEAVE FOR EMERGENCY RESPONDER AND HEALTH CARE PROVIDER EMPLOYEES

On September 9, 2020, Governor Gavin Newsom signed Assembly Bill (“AB”) 1867 into law. This bill adds Labor Code Section 248.1, which provides up to 80 hours of COVID-19 related supplemental paid sick leave (“COVID-19 Supplemental Paid Sick Leave”) for “emergency responder” and “health care provider” employees exempted from the Emergency Paid Sick Leave (“EPSL”) benefits under the Families First Coronavirus Response Act (“FFCRA”).

Qualifying Conditions for Receipt of COVID-19 Supplemental Paid Sick Leave

This new Labor Code section 248.1 entitles “emergency responder” and “health care provider” employees who have been exempted from the FFCRA’s EPSL paid sick leave benefits to instead receive this COVID-19 Supplemental Paid Sick Leave if the employee is unable to work for any of the following three (3) reasons that are generally modeled after the EPSL:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
3. The employee is prohibited from working by the employer due to concerns related to the potential transmission of COVID-19.

For employers familiar with the qualifying conditions for the receipt and use of EPSL, the first two qualifying conditions under AB 1867 mirror those provided for under the FFCRA. (See 29 C.F.R. § 826.20 (i) and (ii).)

The third qualifying condition enumerated above differs from any qualifying condition for EPSL provided under the FFCRA, and would allow an employee to qualify for COVID-19 Supplemental Paid Sick Leave if the employer directs the employee to not report to work for reasons related to COVID-19. In practice, this qualifying condition will most likely apply where an employee has had “close contact” exposure to someone who has COVID-19, but remains asymptomatic after such exposure. According to public health guidance, even with the absence of any symptoms associated with COVID-19, the employer should direct such employee to self-quarantine for up to 14 days following the “close contact” exposure due to the risk of asymptomatic or presymptomatic transmission of COVID-19. In such event, the affected “emergency responder” or “health care provider” employee would qualify for COVID-19 Supplemental Paid Sick Leave because the employer is prohibiting the employee from working due to concerns about the employee’s to the potential transmission of COVID-19 to other employees.

Importantly, the COVID-19 Supplemental Paid Sick Leave **DOES NOT** provide any statutory entitlement to supplemental paid sick leave for the other EPSL related reasons under the FFCRA where the affected “emergency responder” or “health care provider” employee is either:

- (1) caring for an individual who is subject to a federal, state, or local quarantine or isolation order or has been advised by a health care provider to self-quarantine; or
- (2) caring for their son or daughter whose school or place of childcare is closed for reasons related to COVID-19.

(Compare to 29 C.F.R. § 826.20 (iv) and (v), which provides for leave and compensation to employees under such circumstances.)

Benefits under COVID-19 Supplemental Paid Sick Leave

(1) Amount of Leave

Just as with EPSL, employees who qualify to receive COVID-19 Supplemental Paid Sick Leave will be entitled to up to 80 hours of such paid leave if they are full-time employees and work at least 40 hours per week. Part-time employees will be entitled to a prorated amount of such leave based on their normally scheduled work hours over a two-week period. However, if the part-time employee does not have a normal work schedule, the paid sick leave entitlement will be based on the amount of hours that is 14 times their average daily schedule as determined by hours worked over the preceding six month period.

For active duty firefighters who were *scheduled* to work more than 80 hours in the two weeks preceding the date upon which the employee took COVID-19 Supplemental Paid Sick Leave, AB 1867 provides that such employees will be entitled to COVID-19 Supplemental Paid Sick Leave equal to the total number of hours that the individual was *scheduled* to work in the preceding two weeks. Therefore, under certain circumstances, a firefighter exempted from receipt of EPSL under the FFCRA may actually qualify to receive more than 80 hours of COVID-19 Supplemental Paid Sick Leave.

Employers should note that AB 1867 expressly provides that, COVID-19 Supplemental Paid Sick Leave is to supplement, and not run concurrent to, paid sick leave entitlements provided to employees under Labor Code section 246. Therefore, where an employee qualifies for COVID-19 Supplemental Paid Sick Leave, the employer *should not* reduce the amount of other statutory paid sick leave that the employee earned or accrued under Labor Code section 246 or by the employer's alternative accrual methodology.

(2) Compensation for Leave

In the same manner as EPSL, employees who qualify to receive COVID-19 Supplemental Paid Sick Leave will be compensated for each hour of such leave at their "regular rate of pay" up to \$511 per day and \$5,110 in the aggregate.

(3) Public Employers that Provided Alternative Contractual Benefit to Exempted Employees

Some employers exempted "emergency responders" and/or "health care providers" from receiving EPSL under the FFCRA, but then provided the exempted employees a comparable benefit to leave and compensation by contractual agreement. For such employers, AB 1867 expressly provides that the employer may attribute the supplemental benefits provided under that agreement for the purpose of satisfying the requirements of Labor Code section 248.1.

For employers that provided leave for such qualifying conditions, but not compensation, AB 1867 provides that such employers may retroactively provide for such compensation now in order to satisfy their obligations to provide employees *both* leave *and* compensation.

(4) Expiration for Such Benefits

The benefits provided under AB 1867 expire on July 1, 2021 or the date of expiration for the benefits provided under the Emergency Paid Sick Leave Act should the federal government extend such benefits, whichever is later.

Our firm has attorneys familiar with AB 1867 should you or your agency have any questions about AB 1867 or its potential effects on your agency's leave policies and practices.