State Law Round-Up: COVID-19 State and Local Paid Sick Leave Law Developments (US)

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In response to the COVID-19 pandemic, and in light of the gaps in coverage/employee protections of the federal Families First Coronavirus Response Act ("FFCRA"), state and local jurisdictions have taken steps to provide additional protections to employees. A number of jurisdictions with existing statutory sick leave laws have expanded those laws to allow employees to take that leave for COVID-19 related reasons or have otherwise provided guidance as to how the law should be applied with respect to COVID-19 related absences. And several jurisdictions have passed brand new laws requiring employers to provide COVID-19-specific paid sick leave to employees. These provisions are outlined below; we have also provided a summary quick reference chart.

In addition to the jurisdictions highlighted below, employers should familiarize themselves with *all* applicable statutory sick leave laws, as the majority of these laws include provisions for employees to use that statutory leave for at least some of the following reasons:

- The employee's own illness or need to seek medical care or preventive health care;
- To care for a family member who is ill or needs to seek medical care or preventive care;
- When the employee must miss work because their child's school or place of care has been closed due to a public health emergency;
- When the employee's place of work has been closed due to a public health emergency; and/or
- When a public health official has deemed that the employee's (or their family member's) presence in the community would pose a public health threat.

Employers are advised to review and update their policies accordingly, and given how quickly new laws are being passed, should take care to ensure they check on the current state of applicable state and local laws any time an employee requests leave for a COVID-19 related reason. Note that most jurisdictions are encouraging employers to allow employees to use existing accrued sick leave for COVID-19 related reasons.

COVID-19 Statutory Leave Quick Reference Chart*

Jurisdiction *(Alphabetical by state then city)*	**NEW COVID-related law**	**Existing Law, COVID-specific guidance**	**Existing Law, no COVID-specific guidance**
ARIZONA		**X**	
CALIFORNIA		**X**	
Berkeley, CA			**X**
Emeryville, CA		**X**	
Los Angeles, CA	**X**		
Oakland, CA		**X**	
San Diego, CA		**X**	
San Francisco, CA	**X**		
San Jose, CA	**X**		
Santa Monica, CA			**X**

Jurisdiction *(Alphabetical by state then city)*	NEW COVID-related law	Existing Law, COVID-specific guidance	Existing Law, no COVID-specific guidance
COLORADO	**X**		
CONNECTICUT		**X**	
Chicago, IL		**X**	
Cook County, IL		**X**	
MARYLAND			**X**
Montgomery Cty., MD			**X**
MASSACHUSETTS		**X**	
MICHIGAN		**X**	
Duluth, MN		**X**	
Minneapolis, MN		**X**	
St. Paul, MN		**X**	
NEVADA		**X**	
NEW JERSEY		**X**	
NEW YORK	**X**		
New York City, NY		**X**	
Westchester Cty., NY			**X**
OREGON		**X**	
Philadelphia, PA		**X**	
Pittsburgh, PA			**X**
RHODE ISLAND			**X**
VERMONT			**X**
WASHINGTON		**X**	
Seattle, WA		**X**	
Tacoma, WA			**X**
Washington, D.C.	**X**	**X**	

* Chart does not include Bernalillo County, NM (Effective 7-1-20); Maine (Eff. 1-1-21); or Austin/Dallas/San Antonio, TX (all on hold pending litigation).

Jurisdictions with new laws or guidance expanding existing sick leave laws:

CALIFORNIA issued a FAQ to provide guidance regarding employee use of paid sick leave for COVID-19 related purposes. In addition, on April 16, 2020, Governor Newsom signed an Order that gives grocery, food delivery, and farm workers two weeks of COVID-19 supplemental paid sick leave for specified COVID-19 related reasons.

On April 7, 2020, the *Los Angeles* Mayor issued an Emergency Order that provides supplemental paid sick leave ("SPSL") for employees affected by COVID-19 working in Los Angeles for an employer with 500 or more employees within the City of Los Angeles or 2,000 or more employees in the United States. Employees are entitled to SPSL due to an inability to work for any of the following reasons:

- The employee has COVID-19 or has been advised to self-quarantine or isolate by a health care provider or public health official;
- To care for a family member who is not sick but who public health officials or healthcare providers have required or recommended isolation or self-quarantine;
- To care for a family member whose senior care provider or whose school or child care provider caring for a minor child is unavailable due to the recommendation of a public health or other public official, *only if* an alternative caregiver is unavailable.

Employees working 40 or more hours per week are entitled to up to 80 hours of SPSL, and employees who work less than 40 hours per week are entitled to an amount no greater than their average two week pay from February 3, 2020 – March 4, 2020. The eligible amount is offset by any paid leave provided to the employee on or

before March 4, 2020 for the reasons above. Pay for SPSL is capped at $511/day or $5,110 in the aggregate. Employers are not required to pay out unused SPSL if an employee is separated from employment. Employers cannot require employees to provide a doctor's note or other documentation for their absence.

There are various exemptions from coverage, including for emergency personnel, healthcare providers, parcel delivery workers, new businesses, government agencies, employers who already provide at least 160 hours of paid leave per year, and businesses that have already been closed for at least 14 days due to a city official's order related to COVID-19, or have already provided 14 days of leave. The terms of any relevant CBAs may supersede SPSL eligibility. The order expires two calendar weeks after the expiration of the COVID-19 local emergency period.

Under *San Francisco's* new Public Health Emergency Leave Ordinance, effective April 17, 2020, businesses with 500 or more employees worldwide must provide up to 80 hours of paid Public Health Emergency Leave (PHEL) to each employee who performs work in San Francisco. If the number of employees fluctuates, the average number of employees per pay period in 2019 should be used. Individually-owned franchises are not covered unless the number of employees across all businesses owned by the individual franchise owner is at least 500. The ordinance covers businesses that have temporarily closed or suspended operations due to COVID-19.

Employees may use PHEL when they are unable to work (or telework) due to specified reasons related to COVID-19, including:

- They can't work because they are subject to an individual or general Federal, State, or local quarantine or isolation order related to COVID-19;
- They have been advised by a health care provider to self-quarantine;
- They are experiencing symptoms associated with COVID-19 and seeking a medical diagnosis;
- They are caring for a family member (grandparent, grandchildren, parent, children, brother/sister, spouse or domestic partner, niece/nephew, and aunt/uncles) who is experiencing 1-3, immediately above.
- They are caring for family member if the school or place of care of the family member is closed, or the care provider is unavailable, due to the COVID-19 emergency.
- The employee is experiencing any other substantially similar condition specified by the Local Health Officer, or under Section 5102(a)(6) of the FFCRA.

Employers of health care providers and emergency responders may limit such employees' use of PHEL, but such employees must be permitted to use PHEL if they are unable to work or telework because: (1) a health care provider advises them to self-quarantine, or (2) they are experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and did not meet the CDC guidance for criteria to return to work for health care personnel with confirmed or suspected COVID-19.

Full-time employees are entitled to 80 hours of PHEL. For part-time employees, employers should provide the average number of hours worked over a two-week period over the six-month period from 9/25/19 through 2/25/20, including any leave hours taken. PHEL runs concurrently with leave available under the FFCRA. PHEL is in addition to California/San Francisco statutory paid sick leave and employer-provided paid leave, but may be offset (decreased) by any paid leave (including statutory leave) an employer allowed an employee to take on or after February 25, 2020, for the reasons for which PHEL could be taken. Employers may limit an employee's use of PHEL in a given work week to the average number of hours that employee worked in a week during the six months preceding 2/25/20 (or if hired after 2/25/20, to the average hours in one week since the date of hire).

Employees who take PHEL must be paid in the same manner as other paid sick leave under the San Francisco Paid Sick Leave Ordinance, which is at the employee's regular rate of pay for the workweek in which the leave is taken or by using a 90-day look back period. Employers are not required to pay out unused PHEL if an employee is separated from employment. Employers cannot require employees to provide a doctor's note or other documentation for their absence.

The ordinance is effective until June 17, 2020 or the end of the public health emergency, whichever occurs first, unless it is extended. The Office of Labor Standards Enforcement has issued Guidance, FAQs, and a Complaint Form relating to the ordinance. Employers must also post or provide a copy of the poster to employees.

San Jose, which did not previously have a statutory sick leave law, has passed an emergency paid sick leave ordinance, which is effective from April 7, 2020 through December 31, 2020 and applies to *all businesses* that are not required – in whole or in part – to provide paid sick leave benefits under the FFCRA (e.g., employers with 500 or more employees, less than 50 employees, and employers of healthcare providers or emergency responders who are excluded from or can opt out of FFCRA).

Emergency paid sick leave ("EPSL") is available to employees if they take time off because they are:

- Subject to quarantine or isolation due to a federal, state, or local COVID-19 order
- Quarantined or isolated due to COVID-19
- Caring for someone quarantined or isolated due to COVID-19
- Advised by a healthcare provider to self-quarantine
- Experiencing COVID-19 symptoms and are seeking a medical diagnosis;
- Caring for a minor child because a school or daycare is closed due to COVID-19.

Eligible employees are those who leave their residence to perform essential work. Full-time employees are entitled to up to 80 hours of EPSL, and part-time employees are entitled to the average number of hours worked in a two-week period (based on the preceding six months). Employees are entitled to their regular rate of pay up to $511/day and $5,110 total (unless the employee is caring for another person, in which case they are only entitled to two-thirds of their regular rate of pay, up to $200/day and not more than $2,000 total). Unused EPSL does not need to be paid out upon separation from employment.

Employers who already have paid leave policies providing leave equivalent to the emergency leave ordinance on April 7, 2020 are exempt. Employers whose policies are less than equivalent are only required to comply with the order "to the extent of the deficiency". For example, if an employer provided 80 hours of PTO/sick leave to an employee on January 1, and the employee had used 20 hours prior to April, then the employer would only be required to provide 20 additional hours of sick leave, which can only be used by the employee for the specified COVID-19 related reasons. Here are links to FAQs, a poster, and an opinion letter on the new law.

COLORADO was the first state to provide for emergency COVID-related leave. Under Colorado's Health Emergency Leave with Pay ("HELP") rules, employers in certain industries are required to provide paid sick leave to employees with flu-like symptoms who are being tested for COVID-19 or, as of March 26, 2020, who are under instructions from a health care providers to quarantine or isolate due to the risk that they may have COVID-19. Employers engaged and employees working jobs in the following industries are covered:

- Leisure and hospitality
- Retail stores that sell groceries (as of March 26, 2020)
- Food and beverage manufacturing (as of April 3, 2020)
- Food services
- Child care
- Education, including transportation, food service, and related work with educational establishments
- Home health, if working with elderly, disabled, ill, or otherwise high-risk individuals

- Nursing homes
- Community living facilities

Under the HELP rules, employers must provide up to four days of paid sick leave to employees with flu-like symptoms who are being tested for coronavirus COVID-19 or who are under instruction from a health care provider to quarantine or isolate due to a risk of having COVID-19. If the employee receives a negative test result before the end of four days, the paid leave ends. The rules specify that the four days are four "calendar" days. For example, if an employee falls ill on a Thursday or is told by a health care provider to quarantine or isolate, and makes plans to get tested, then the employer must only provide leave for any days/times the employee actually would have worked on Thursday through Sunday.

Notably, employers who already provide paid leave that can be used for the HELP-covered purposes do NOT need to provide additional leave, EXCEPT if an employee has already exhausted available employer-provided paid leave and then exhibits flu-like symptoms, in which case the employer must provide the HELP leave. The HELP rules specify what documentation an employer can require, what notice an employee must give of the need for leave, and provides further details on covered industries.

MICHIGAN's governor, acting under the state's Emergency Management Act, issued an Executive Order prohibiting *all employers* from discharging, disciplining, or otherwise retaliation against an employee for staying at home when the employee is at particular risk of infecting others with COVID-19, including when:

- The employee has tested positive for COVID-19 or displays one or more of the principal symptoms of COVID-19 (fever, atypical cough, or atypical shortness of breath), in which case the employee must stay home until 3 days after their symptoms have resolved AND seven days since their symptoms first appeared or since they were swabbed for the test that yielded the positive result UNLESS the employee receives a negative COVID-19 test, in which case this provision shall cease to apply;
- The employee had close contact (as defined in the Act) with an individual who tests positive for COVID-19 or displays one or more of the principal symptoms of COVID-19 (fever, atypical cough, or atypical shortness of breath), in which case the employee must remain home for 14 days since the last contact with the sick or symptomatic individual, or the sick or the symptomatic individual receives a negative COVID-19 test. Note that this provision does not apply to certain classes of workers such as employees working at health care facilities, first responders, employees of correctional facilities, and limited other groups.

Employees in the circumstances above must be treated as if they are taking statutory paid sick leave under Michigan's Paid Medical Leave Act; if the employee does not have any statutory paid leave remaining, the leave shall be unpaid, otherwise the employer can deduct (and pay) accrued statutory leave from the employee's leave bank. There is no limit to the amount of unpaid leave required—it must be provided as long as the employee remains away from work within the time periods described above. Of note, while Michigan's Paid Medical Leave Act only applies to employers of 50 or more employees and does not cover exempt employees, the requirements of the Executive Order extend to *all employers and all employees* (with exceptions for certain classes of employees as noted above).

Employers are further prohibited from discharging, disciplining or retaliating against an employee for failing to comply with a requirement to document that the employee or the close contact of the employee has one or more symptoms of COVID-19. The Executive Order also clarifies that employers are NOT prohibited from discharging or disciplining an employee who:

- Is allowed to return to work but declines to do so;
- Consents to the action; or
- For any other lawful reason.

MINNESOTA

Duluth has issued COVID-19 specific FAQs regarding use of paid sick leave for COVID-19 related reasons. The FAQs note that the following are protected activities for which employees can use accrued sick leave:

- COVID-19 screening/testing;
- Receiving care due to COVID-19 symptoms or infection;
- Providing care to a family member with COVID-19 symptoms or infection.

Minneapolis has provided COVID-19 specific guidance regarding the existing paid sick and safe time law. Per that guidance, an employee's accrued sick and safe time hours are legally protected for their use due to Coronavirus symptoms, testing or infection. Protection extends to the employee and the employee's care of a covered family member. Employees may use PSL for the following COVID-19 related reasons:

- Absences for COVID-19 screening;
- Absences due to Coronavirus symptoms or infection;
- Absences for testing or quarantine following close personal contact with an infected or symptomatic person;
- Covered family members' school or place-of-care closure due to COVID-19; and
- Workplace closure by order of a public official due to COVID-19.

Employees may use PSL if they are infected or symptomatic, or if they have a reason to believe they are probably infected (this is viewed as "preventive care" during the pandemic). If a school or place of care has been closed, employees who must care for their children as a result may use PSL for those absences. If a place of business is closed by order of a public official, its employees can use accrued PSL for those absences. *However, absences due to the preemptive closure of a business or an employee's preemptive self-quarantine are not covered by the law*.

The city of ***St. Paul*** has also issued COVID-19 specific FAQs. While St. Paul has not expanded the reasons for taking paid sick leave, the FAQs do caution that employers cannot require employees to provide doctor's notes where it would not be reasonable, and that OSHA COVID-19 guidance advises employers not to require a note for employees who are sick due to upper respiratory illnesses in order to validate their absences.

NEVADA's paid leave law, which went into effect on January 1, requires employers with 50 or more employees in Nevada to provide paid leave for employees to use for any reason. In response to the COVID-19 pandemic, the Labor Commissioner issued guidance advising employers that they should NOT count any time an employee misses from work due to the employee being subject to a mandatory government quarantine against their paid leave entitlement. However, employees can CHOOSE to use such leave during that time.

NEW JERSEY has provided COVID-19 specific guidance regarding its existing paid sick leave law. Per that guidance, an employee may use accrued PSL for the following COVID-19 related reasons (in addition to existing reasons):

- Absences due to the employee having COVID-19 or symptoms of COVID-19;
- Absences due to the need to care for a family member with COVID-19 or symptoms of COVID-19, or is in isolation or quarantine with suspicion of exposure;
- Absences where an employee's healthcare provider or a public health authority advises them to quarantine (e.g., immunocompromised individuals);

- Absences where employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others.

Employees cannot use earned sick leave for absences due to voluntary closure of their workplace or reductions in force/hours, or because they don't want to report to work for fear of contracting COVID-19 where their employer is permitted to operate.

As we previously reported (here, here and here), on March 18, 2020, *NEW YORK* enacted a statewide COVID-19 sick leave law. Under this law, employees who are subject to an individual isolation, mandatory quarantine or precautionary quarantine order are eligible for sick leave. In addition, under separate legislation, New York is set to require employers to provide sick leave to employees beginning in 2021. See our prior coverage of this law here.

New York City has also issued guidance regarding employee use of PSL for COVID-19 specific reasons. Per that guidance, employees may use accrued sick leave when:

- The employee feels ill or shows symptoms of COVID-19;
- The employee gets tested for the flu or COVID-19;
- The employee is under quarantine or self-isolating for preventative purposes;
- The employee is caring for a family member under a mandatory or precautionary order of quarantine;
- A public official closes their place of business temporarily due to public health emergency;
- A public official closes their child's school or health care provider due to a public health emergency.

Philadelphia has also issued emergency regulations governing use of paid sick leave for COVID-19 related reasons. During the COVID-19 risk, covered employees in Philadelphia can use accrued paid sick time for the following:

- Absences due to mandated business closures or orders not to travel where travel would be necessary to report to work;
- Absences due to the need to care for children during school, adultcare or childcare closures;
- Absences due to the employee's own illness and treatment or need to care for a family member during their illness and/or treatment;
- Absences due to the need to seek diagnosis for COVID-19;
- Absences due to the employee engaging in self-quarantine due to symptoms of COVID-19, exposure to someone diagnosed with COVID-19 or after certain international travel;
- Absences due to the employee's or their family member's self-quarantine at the recommendation of a health care professional, the CDC, or other official, where they have a greater risk of harm from contracting COVID-19 (such as a compromised immune system).

In addition, during the COVID-19 health risk, employees are not required to provide a note from a medical professional in order to use paid sick leave.

Seattle has expanded the reasons for which employees can use sick and safe time (Seattle Municipal Code Chapter 14.16.030), and has provided a COVID-19 specific FAQ. Among the expanded reasons for which employees can use sick leave are:

- When their family member's school or place of care has been closed;
- For employers with 250 or more full-time equivalent employees worldwide, when the employee's place of business has reduced operations or closed for any health- or safety-related reason.

Seattle has also implemented a temporary emergency rule providing that employers cannot require a doctor's note or health care provider's verification during the COVID-19 pandemic; employers must identify and provide alternative methods for employees to meet any employer verification requirement.

On April 10, *Washington, D.C.* passed a law temporarily expanding D.C.'s Accrued Sick and Safe Leave Act ("ASSLA"). Under the expansion, employers with between 50-499 employees must provide "declaration of emergency" ("DOE") leave for any reason an employee might take leave under the federal FFCRA. While DOE leave may be taken for the same reasons as FFCRA leave, because the leave is an expansion of ASSLA, the definition of family member is broader than that in the FFCRA. Employees may take up to two weeks (80 hours) of DOE leave (for part-time employees, up to the usual number of hours worked in a two-week period). DOE leave does not apply to health care provider employers. DOE leave is in addition to any other leave (including FFCRA leave) that might be available to employees, however employers can require employees to exhaust any existing accrued leave mandated by D.C. or federal law before using DOE leave.

The following additional jurisdictions have published posters, FAQs, or other guidance regarding employee use of such leave for COVID-19 related purposes:

- Arizona
- Connecticut
- California
- Emeryville, CA
- Oakland, CA
- San Diego, CA
- Chicago, IL
- Cook County, IL
- Massachusetts
- Oregon
- Washington