COVID-19 Emergency Paid Sick Leave Laws & Programs

A brief summary of emergency paid sick leave laws and programs enacted due to COVID-19 (in addition to mandatory existing paid sick & safe time laws) from across the country (no cites):

- Federal Families First Coronavirus Response Act
- California
  - California Executive Order re: Food Sector Worker Supplemental Paid Sick Leave
  - California Assembly Bill 1867 Re: Supplemental Paid Sick Leave For Food Sector Workers, Employees Of Employers With 500 Or More Employees And/Or Health Care Provider / Emergency Responder Employees Excluded From Federal FFCRA
  - Long Beach, California Supplemental Paid Sick Leave Ordinance
  - Los Angeles, California Supplemental Paid Sick Leave Emergency Order
  - Los Angeles County, California Supplemental Paid Sick Leave Ordinance
  - Oakland, California Supplemental Paid Sick Leave Ordinance
  - Sacramento, California Worker Protection, Health, and Safety Act
  - Sacramento County, California Worker Protection, Health, And Safety Act Of 2020
  - San Francisco, California Public Health Emergency Leave Ordinance
  - San Francisco Workers and Families First Program
  - San Jose, California Emergency Paid Sick Leave Ordinance
  - San Mateo County, California Supplemental Paid Sick Leave Ordinance
  - Santa Rosa, California Temporary Sick Leave Ordinance
  - Sonoma County, California Supplemental Paid Sick Leave Ordinance
- Colorado Healthy Families and Workplaces Act
- Colorado Emergency Paid Sick Leave Rules for COVID-19 Testing [EXPIRED]
- District of Columbia Emergency Paid Leave Amendment
- Nevada Coronavirus Protocols for Public Accommodations (Paid Time Off)
- New York State Paid and/or Unpaid Leave During COVID-19 Quarantine or Isolation
- Pennsylvania
  - Philadelphia, Pennsylvania Pool & Healthcare Employee Pandemic / Epidemic Pay & Medical Expenses
  - Philadelphia, Pennsylvania Public Health Emergency Leave
  - Pittsburgh, Pennsylvania Temporary Emergency COVID-19 Paid Sick Leave
- Puerto Rico Minimum Salary, Vacation and Sick Leave Act Amendments
- Washington
  - Washington State Gubernatorial Proclamation re: Food Production Workers Paid Leave
  - Seattle, Washington Paid Sick and Safe Time for Gig Workers Ordinance

Federal Families First Coronavirus Response Act

Important Update re: Lawsuit Challenging Validity of FFCRA Regulations & Revised Regulations

A federal judge vacated the following portions of challenged FFCRA Regulations: 1) The work-availability requirement; 2) The definition of "health care provider;" 3) The requirement that an employee secure employer consent for intermittent leave; and 4) The requirement that documentation be provided before taking leave. However, the ruling left intact the following portions of challenged FFCRA Regulations: A) The outright ban on intermittent leave for certain qualifying reasons (those which logically correlate with a higher risk of viral infection, *i.e.*, if there is confirmed or suspected COVID-19); B) The substance of the documentation requirement (*i.e.*, information an employee must provide). Questions remain concerning whether the decision applies nationwide or in New York State or the Southern District of New York only. When more information about the decision's scope becomes available, an update will be provided. *New York v. U.S. Dep't of Labor*, 1:20-cv-03020, ECF 37 (S.D.N.Y. Aug. 3, 2020).

On September 16, 2020, in response to the court's decision, the U.S. Department of Labor published revised regulations. The Department revised its rules on the health care employee exception, and providing documentation before taking leave. However, it did not revise its rules on intermittent leave or work availability.

Under H.R.6201, private employers with 499 or fewer employees must provide covered employees emergency paid sick and/or paid family leave. The law, which takes effect no later than April 2, 2020, 15 days after the law's March 18, 2020 enactment date, will remain in effect until December 31, 2020.

For paid family leave, employees must be employed for at least 30 calendar days, whereas the paid sick leave provisions generally apply to all employees. However, for both paid leaves, employers of employees who are health care providers or emergency responders can exclude such employees from the law's requirements. Via regulations, the U.S. Department of Labor can exclude certain health care providers and emergency responders from coverage, including by allowing employers to opt out. Additionally, imposing paid leave requirements would jeopardize the viability of the business as a going concern, via regulations DOL can exempt small businesses with fewer than 50 employees from the law's requirements on leave for care for a child if the child's school or place of care closes, or whose child care provider is unavailable, due to coronavirus precautions.

For paid family leave, employees must give notice of the need to use leave as soon as practicable. For paid sick leave, after the first workday or portion thereof an employee receives benefits, employers can require the employee to follow reasonable notice procedures to continue receiving paid sick leave. Under the law, employees can use paid leave for the following purposes:

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT	EMERGENCY PAID SICK LEAVE ACT
Qualifying need related to a public health emergency declared by federal, state, or local authority concerning COVID-19 in which an employee is unable to work or telework due to: • Care for a child under 18 years old if a school or place of care has been closed due to a public health emergency • Care for child under 18 years old if a child care provider is unavailable due to a public health emergency	Employee is unable to work or telework due to the following: • Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 • Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 • Seek medical diagnosis if the employee is experiencing coronavirus symptoms • Care for an individual who is subject to a federal state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to

	COVID-19 • Care for a child if a school or place of care is closed, or a child care provider is unavailable, due to COVID-19 precautions • Employee is experiencing any other substantially similar condition specified by the Health and Human Services Secretary of in consultation with the Secretaries of Treasury and Labor

Employers must provide full-time employees 80 paid sick leave hours and a proportionate amount to part-time employees. Employees can use paid sick leave before other paid leave benefits an employer provides, and employers cannot require employees to use other employer-provided paid leave before paid sick leave. Additionally, the law does not diminish the rights or benefits to which an employee is entitled under law, a collective bargaining agreement, or an existing employer policy. After an employee's need to use paid sick leave ends, the entitlement ends. Unused paid sick leave does not carry over to the following year, and employers need not cash-out unused leave when employment ends.

The first 10 days of paid family leave may be unpaid, though employees can elect to use accrued vacation, personal, medical, or sick leave during this period and employers cannot require them to use such accrued leave. Afterwards, employees receive paid leave during the remainder of their FMLA leave period when they use paid family leave for the above covered purposes.

For paid sick and paid family leave, employees can use paid leave for their normally scheduled hours. For paid sick purposes, if employees use leave for themselves (except for TBD substantially similar conditions), employers pay leave at the employee's regular rate or the federal, state, or local minimum wage, whichever is greater. However, if they use leave to care for others (and/or TBD substantially similar conditions), employers pay leave at two-thirds the applicable rate. Similarly, for paid family leave, employers must pay leave at two-thirds the employee's regular rate. The maximum daily and aggregate amounts of paid sick leave for personal or family care is $511 and $200 per day, and $5,110 and $2,000 overall, respectively. For paid family leave, the maximum daily and aggregate amounts are $200 and $10,000, respectively. The law covers unionized workers, though employers participating in multi-employer collective bargaining agreements may satisfy their paid sick and paid family leave obligations via contributions to multiemployer funds, plan or programs from which employees can secure payment for paid leave they use.

Employers cannot require employees to search for or find a replacement worker to cover a shift when they use paid sick leave, and cannot discharge, discipline, or in any manner discriminate against employees who take paid sick leave and file a complaint, or institute or cause to be instituted any proceeding under or related to the law, or who testified or are about to testify in such a proceeding. For paid family leave, the FMLA's jobs restoration rights apply except to employers with fewer than 25 employees under certain circumstances.

Employers must conspicuously display the U.S. DOL notice describing the paid sick law's requirements on its premises where they customarily post notices to employees.

For a more complete discussion concerning the law, *see*

- Congress Makes Significant Changes to Proposed FMLA and Sick Leave Requirements in COVID-19 Bill
- Senate Approves Paid Sick Leave, Family Medical Leave Expansion; Bill Expected to Become Law
- DOL Releases Q&A Guidance on Families First Coronavirus Response Act
- Second Set of DOL FAQs Provide More Clarity on Upcoming Federal Paid Sick and Family Leave Obligations

- DOL Issues Third Batch of Families First Coronavirus Response Act Q&As and Revises Prior Guidance
- DOL Releases Regulations Implementing the Families First Coronavirus Response Act, Emergency Paid Sick Leave: U.S. Department of Labor Enforcement Efforts On The Rise
- DOL Provides Guidance on FFCRA Leave Relating to Summer Camp and Program Closures
- DOL Issues Return-to-Work Guidance Under the Families First Coronavirus Response Act
- NY Federal Court Strikes Down Key Provisions of DOL Rule Regarding FFCRA Paid Sick and Expanded FMLA Leave
- DOL Issues Guidance for Certain Federal Contractors on Paid Sick Leave and Expanded Family and Medical Leave under the FFCRA
- New FFCRA FAQs Address Return-to-School Leave Issues
- DOL Revises FFCRA Regulations to Clarify Paid Leave Rules in Wake of New York Federal Court's Decision

California

California Executive Order re: Food Sector Worker Supplemental Paid Sick Leave

On April 16, 2020, Governor Newsom signed Executive Order ("EO") N-51-20, which requires certain food sector workers to receive COVID-19 supplemental paid sick leave (CPSL) during the pendency of any statewide stay-at-home orders by California's Public Health Officer. However, workers taking leave when an order expires can continue taking leave.

The EO covers a "hiring entity," essentially any private company with 500 or more employees in the United States, including a Delivery Network Company (Cal. Rev. & Tax. Code § 6041.5(b)) and a Transportation Network Company (Cal. Public Utilities Code § 5431(c)). For business size calculations, the EO uses federal FFCRA rules (29 C.F.R. § 826.40(a)(1)-(2)). Additionally, it covers essential critical infrastructure workers who are exempt from requirements under EO N-33-20 or any other statewide stay-at-home order that leave their home or other place of residence to perform work for or through a hiring entity who satisfies any of the following criteria:

- Person works in one of the industries or occupations
    - Canning, Freezing, and Preserving Industry [Wage Order 3-2001 § 2(B)]
    - Industries Handling Products After Harvest [Wage Order 8-2001 § 2(H)]
    - Industries Preparing Agricultural Products for Market, on the Farm [Wage Order 13-2001 § 2(H)]
    - Employed in an agricultural occupation [IWC Wage Order 14-2001 § 2(D)]
- Person works for a hiring entity that operates a food facility [Cal. Health & Safety Code § 113789(a)-(b)]; or
- Person delivers food from a food facility [Cal. Health & Safety Code § 113789(a)-(b)].

CPSL is in addition to any leave covered workers might receive already, *e.g.*, paid sick leave under California's Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA"). Hiring entities cannot require workers to use any pre-existing paid or unpaid leave before they use, or in lieu of using, CPSL.

A hiring entity must provide 80 hours of CPSL to a worker it considers full-time or if the individual worked or was scheduled to work on average at least 40 hours per week in the two weeks preceding the date the individual took leave. A worker with a normal weekly schedule receives the total number of hours the entity normally schedules the worker to work over two weeks. Individuals who work variable hours receive 14 times the average number of hours they worked each day in the six months preceding the date they took leave, or during the entire period of employment if they were employed for fewer than six

months. However, a hiring entity need not provide CPSL if, as of April 16, it provides the worker a supplemental benefit, such as paid leave, that is payable for the reasons, and in an amount equal to or greater than, the EO requires.

Covered workers can use CPSL immediately if they are unable to work due to the following reasons: 1) The worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19; 2) A health care provider advises the worker to self-quarantine or self-isolate due to concerns related to COVID-19; or 3) The hiring entity prohibits the individual from working due to health concerns related to the potential transmission of COVID-19. Workers can make a verbal or written request for leave. They alone determine how many leave hours they will use.

Generally, the enforcement agency says hiring entities cannot deny leave solely because a worker does not provide certification from a healthcare provider. However, in certain circumstances, the agency says it may be reasonable to ask for documentation, *e.g.*, demonstrable leave abuse. Per the agency, "the reasonableness of the parties' actions will undoubtedly come into play."

Hiring entities must pay leave at the worker's regular rate of pay for the last pay period, the state minimum wage, or the local minimum wage, whichever is highest. However, the amount of pay caps out at $511 per day and $5,110 overall.

California's Division of Labor Standards Enforcement ("DLSE") will enforce and implement the EO and must look to the HWHFA [Cal. Lab. Code §§ 246(n), 246.5(b)-(c), 247, 247.5, and 248.5] concerning when entities must pay workers for leave they use, the prohibition against requiring individuals to find a replacement worker, anti-discrimination and -retaliation protections, workplace posters (DLSE must make available by April 23), recordkeeping, penalties and damages.

For more information, *see* California Extends COVID-19 Paid Sick Leave to Essential Food Sector Workers.

California Assembly Bill 1867 Re: Supplemental Paid Sick Leave For Food Sector Workers, Employees Of Employers With 500 Or More Employees And/Or Health Care Provider / Emergency Responder Employees Excluded From Federal FFCRA

On September 9, 2020, Governor Gavin Newsom signed Assembly Bill (AB) 1867, a five-part bill that, among other things, codifies existing COVID-19 supplemental paid sick leave (CPSL) requirements for certain food sector workers and adds CPSL requirements for other employers.

Food Sector Worker Supplemental Paid Sick Leave: In large part, AB 1867 simply codifies the language in Executive Order (EO) N-51-20 (see above), creating new California Labor Code section 248 (LC 248). LC 248 takes effect immediately and is retroactive to the date EO-N-51-20 took effect (April 16, 2020). Most differences between the EO and LC 248 are described directly below, but the next section (Supplemental Paid Sick Leave for Other Workers) contains a discussion on requirements another new statute and LC 248 share, including a provision that may reduce the amount of leave covered employers must provide.

Though modeled after EO N-51-20 and largely incorporating its language, new LC 248 also contains some differences from the executive order. Under EO N-51-20, employers must provide CPSL during the pendency of any statewide stay-at-home orders. In contrast, LC 248 provides that CPSL requirements will exist until December 31, 2020 – the same end date for the federal Families First Coronavirus Response Act (FFCRA) – or, if the federal government extends the end date for the FFCRA's Emergency Paid Sick Leave Act, the extended-to date.

Another notable difference between EO N-51-20 and LC 248 involves which entities are considered a "food facility." Both the executive order and LC 248 use the definition in California Health and Safety Code section 113789. However, because EO N-51-20 referenced subsections (a) and (b) only, there were questions about the applicability of subsection (c), which discusses entities that do not constitute a "food facility." LC 248 clears up these questions by referencing the entire section 113789, rather than specific subsections.

As the California Labor Commissioner notes in its FAQ, "Note that under the Executive Order, the food sector worker was required to be exempt from the Stay at Home Order (EO N-33-20) in order to be eligible for Supplemental Paid Sick Leave, but this is not a requirement under Labor Code section 248."

For employers that provided leave pursuant to EO N-51-20 that are wondering whether they must provide additional leave per LC 248, the law expressly says "no." Paid leave already provided pursuant to EO N-51-20 or supplemental paid leave provided under federal or local law for the same reasons will satisfy LC 248's requirement to provide CPSL.

Although EO N-51-20 required the Labor Commissioner to create a notice, and for employers to distribute it to workers, LC 248 merely incorporates the pre-COVID-19 statewide paid sick leave law requirement that employers display a state-created poster. As a result, it is currently unclear whether employers will need to update the mandatory notice created by the California Labor Commissioner, and resend a notice to workers about their CPSL rights.

Supplemental Paid Sick Leave for Other Workers: Unlike the continued CPSL requirements for food sector workers, new CPSL requirements for the following employers and employees will not take effect immediately. According to the statute's text, new California Labor Code section 248.1 (LC 248.1) must become operative "not later than 10 days after the date of enactment." The new poster says covered employers must provide CPSL "by September 19, 2020." Similarly, the revised FAQs say they must provide CPSL "starting September 19, 2020 at the latest."

As with LC 248, new LC 248.1 borrows heavily from the text of EO N-51-20, and incorporates various interpretations of EO N-51-20 issued by the California Labor Commissioner. In addition to obvious differences – who the law covers – there are some differences when it comes to how LC 248.1 operates.

Covered Employers & Employees: New LC 248.1 applies to private "hiring entities" with 500 or more employees in the United States, the District of Columbia, or any U.S. territory, and to individuals who leave their home or place of residence to perform work for a hiring entity that employs them. Although under LC 248.1 (and 248), all covered workers are considered employees, and any hiring entity is considered an employer, in its FAQ, the California Labor Code section says LC 248.1 does not apply to properly classified independent contractors. LC 248.1 excludes LC 248 employees, *i.e.*, food sector workers, ensuring that food sector workers do not receive double coverage under these new laws. Notably, unlike a number of other paid sick leave laws, LC 248.1 does not contain an exception for unionized workforces.

Additionally, the law applies to any entity – including a public entity – that is subject to the federal FFCRA and that elected to exclude health care provider or emergency responder employees from the FFCRA's emergency paid sick leave requirements, and thereby extending LC 248.1 to such excluded employees.

Amount of Leave: The amount of CPSL an employee receives, and can use, under LC 248.1 depends on whether they are "full" time, not "full" time, or active firefighters. For anyone knowledgeable about EO N-51-20, the following standards will look very familiar.

A covered worker is entitled to 80 hours of CPSL if the hiring entity considers the worker to work "full time" or the worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the worker took leave. For covered workers who are

not "full" time, or firefighters, the amount of leave they receive depends on whether they have a normal weekly schedule or work variable hours. Workers with a normal weekly schedule receive an amount of CPSL equal to the total number of hours they are normally scheduled to work for the hiring entity over two weeks. However, if they work a variable number of hours, they receive 14 times the average number of hours they worked each day for the hiring entity in the six months preceding the date they took leave (Note: In revised FAQ, the state labor department discusses the potential for needing to recalculate the amount of leave for these employees if they work a new schedule under which they be owed additional SPSL hours). If their employment tenure includes fewer than six months, the total length of employment is to be used, unless they have been employed for 14 days or fewer, in which case, the total number of hours worked must be used. Active firefighters scheduled to work more than 80 hours for the hiring entity in the two weeks preceding the date the worker took leave are entitled to an amount of CPSL equal to the total number of hours they were scheduled to work for the hiring entity in those two preceding weeks.

As with EO N-51-20, and LC 248, workers covered by LC 248.1 determine how many hours of leave they need to use. Likewise, LC 248.1 requires that CPSL be provided in addition to any paid sick leave available to a worker under California's pre-COVID-19 Healthy Workplaces, Healthy Families Act of 2014 (HWHFA). Further, LC 248.1 also includes the prohibition against requiring workers to use other paid or unpaid leave, time off, or vacation the hiring entity provides before, or in lieu of, using CPSL.

Some businesses might be able to reduce the amount of leave they must provide. Under LC 248.1 (as well as LC 248), if a business already provides a covered worker with a supplemental benefit, such as supplemental paid leave, that is payable for the law's covered reasons and that would compensate the worker in an amount equal to or greater than the amount of compensation the law requires, the business may count the other paid benefit or leave hours towards the total number of CPSL hours it must provide the covered worker. For purposes of both LC 248 and 248.1, paid sick leave a worker receives under California's HWHFA does not qualify as a supplemental benefit. However, as alluded to above, paid leave already provided per EO N-51-20, or supplemental paid leave provided pursuant to federal or local law for the same reasons the law requires, may qualify. Additionally – for LC 248.1 only – if the business already provided supplemental paid leave between March 4, 2020 and the law's effective date for the law's covered reasons, but did not compensate the worker in an amount equal to or greater than the amount of compensation LC 248.1 requires, the business may retroactively provide supplemental pay to the worker to satisfy the law's pay requirements and apply those hours towards the total number of hours of CPSL the worker is entitled to receive. The reason for this difference (between LC 248 and LC 248.1) is unknown. Per a revised FAQ, the state labor department says this true-up must occur "on the pay day for the first full pay period after September 19, 2020."

Covered Uses: Like EO N-51-20 and LC 248, workers covered by LC 248.1 can use CPSL when they are unable to work when they are: 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 concerns related to COVID-19; and/or 3) prohibited from working by the hiring entity due to health concerns related to the potential transmission of COVID-19. Unlike the federal FFCRA, and numerous mini-FFCRA ordinances throughout California, employees cannot use CPSL to care for or assist another individual, *e.g.*, they cannot use CPSL if their child's school closes, or childcare provider is unavailable, due to COVID-19. A hiring entity must make CPSL available for immediate use upon the worker's oral or written request.

Rate of Pay: When workers use CPSL, they must be paid their regular rate of pay for the last pay period (including pursuant to any collective bargaining agreement that applies), or the state or local minimum wage, whichever rate is highest. Note, however, that a different pay rate standard applies to firefighters: the regular rate of pay to which the worker would be entitled if the worker had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement. In either case, the law caps the maximum amount of pay an employer must provide for CPSL at $511 per day and $5,110 overall. Payment for leave taken must be made no later than the payday for the next regular payroll period after leave was taken.

Notice, Paystub & Recordkeeping Requirements: By seven days after the law's effective date, the California Labor Commissioner must make available a model notice to provide to workers. If workers do not frequent a workplace, a business can disseminate notice electronically, *e.g.*, by email.

Notably, LC 248.1 deviates from most other emergency paid sick leave laws – including EO N-51-20 and LC 248 – in that it includes a paystub requirement, incorporating by reference the HWHFA paystub standard, which requires written notice concerning the amount of leave available on either an itemized wage statement or in a separate writing provided on designated pay dates. Per revised FAQ, the state labor department says SPSL hours available must be listed separately than general PSL hours available, and that "(variable)" must be listed next to the SPSL amount for variable-hour part-time employees' paystubs (based on the possibility of a need to recalculate their SPSL leave amount if they work a new schedule after their employer performed the initial calculation occurred).

Similar to LC 248.1's paystub requirement, the law incorporates by reference the HWHFA's recordkeeping requirement. Accordingly, for at least three years, a hiring entity must retain records documenting hours worked, leave provided, and leave used by an employee.

Prohibitions: Neither LC 248 nor 248.1 independently establishes prohibitions distinct from the HWHFA. Instead, these new laws incorporate existing HWHFA restrictions. As such, hiring entities cannot require, as a condition of using leave, that workers search for or find a replacement worker to cover the days they use leave. Additionally, they cannot deny a worker the right to use leave, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against a worker for using leave, attempting to exercise the right to use leave, filing a complaint with the California Labor Commissioner or alleging a violation of the law, cooperating in an investigation or prosecution of an alleged violation of the law, or opposing any policy or practice or act that the law prohibits. Moreover, there is a rebuttable presumption of retaliation if a hiring entity denies an employee the right to use leave, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against a worker within 30 days of any of the employee filing a complaint with the California Labor Commissioner, cooperating with an investigation or prosecution of an alleged violation, or opposing an unlawful policy, practice, or act.

Penalties & Enforcement: Generally, both LC 248 and 248.1 provide for enforcement by the California Labor Commissioner. In discussing available remedies, both statutes reference other laws, such as California's unfair competition law, and incorporate the HWHFA's penalties and damages.

Concerning penalties, a willful poster violation carries a civil penalty of not more than $100 per offense. Additionally, an administrative penalty equal to the dollar amount of leave withheld multiplied by three or $250 (whichever amount is greater) can be assessed, up to a $4,000 aggregate penalty. If a violation results in other harm or otherwise results in a violation of rights, the administrative penalty must include a sum of $50 for each day or portion thereof that the violation occurred or continued, not to exceed a $4,000 aggregate penalty. Further, the California Labor Commissioner can recover investigation and enforcement costs of not more than $50 for each day or portion of a day a violation occurs or continues for each employee or other person whose rights were violated. Finally, penalties for paid leave paystub violations are in lieu of the penalties for a violation of California Labor Code section 226, the state's general paystub law.

In terms of relief that is available to remedy a violation, the following relief is available: reinstatement, back pay, payment of leave withheld, payment of an additional sum, not to exceed a $4,000 aggregate penalty, as liquidated damages in the amount of $50 to each employee or person whose rights were violated for each day or portion thereof the violation occurred or continued, plus, if leave was withheld, the dollar amount thereof multiplied by three or $250, whichever amount is greater; injunctive relief; reasonable attorney's fees and costs; interest on all amounts due; and other remedies as may be

provided by the laws of California or its subdivisions (including, but not limited to, the remedies available to redress any unlawful business practice under the Unfair Competition Law, Business and Professions Code sections 17200 *et seq.*).

For more information, *see* California Expands COVID-19 Supplemental Paid Sick Leave Requirements.

Long Beach, California Supplemental Paid Sick Leave Ordinance

On May 19, 2020, Long Beach, California enacted a law requiring supplemental paid sick leave for COVID-19 purposes. The city enacted an urgency ordinance that takes effect immediately, plus approved an identical, "regular" ordinance that will come back to the city council for a second, final reading at a future council meeting. The Long Beach ordinance has no current "end" date; rather, the city manager must report to the city council and mayor every 90 days, and the city council will determine whether and when the law will no longer apply.

The ordinance applies to employers with 500 or more employees nationally whom the federal Emergency Paid Sick Leave Act does not wholly or partly require provide paid sick leave benefits.

The ordinance covers any individual the employer employs who performs any work in Long Beach. The law notes that, generally, California law determines whether a worker is an employee or an independent contractor. Employers may exclude from the law's requirements employees who are health care providers and emergency responders.

For companies with unionized workforces, there are two relevant provisions. Generally, a collective bargaining agreement (CBA) in place on May 19 may supersede the law's requirements if it contains COVID-19 related sick leave provisions. When the CBA expires or otherwise opens for renegotiation, to continue to be outside the law's scope, the CBA must expressly waive the law's requirements. Similarly, for CBAs without COVID-19 sick leave, the law applies unless an amendment occurs that expressly waives the law's requirements in clear and unambiguous terms. For construction industry employers, the ordinance incorporates the construction CBA exception in the non-COVID-19 statewide paid sick leave law, the Healthy Workplace Healthy Family Act of 2014. However, like other local mini-FFCRA ordinances in California, it does not elaborate on how to apply this standard to the local law, *e.g.*, state law may exempt employees if, other requirements are met, the CBA was entered into before January 1, 2015, which would be at least five-and-a-half years before the Long Beach ordinance takes effect.

Employers with a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually are exempt from the obligation to provide supplemental paid sick leave to any employee that received such generous paid leave. Otherwise, immediately, employers must provide 80 leave hours to full-time employees and, for part-time employees, an amount equal to the number of hours an employee works, on average, over a two-week period. For part-time employees, the ordinance contains a calculation employers must use to determine how many daily hours of leave employees can take, which is the daily average during the six-month period (or period of employment) preceding May 19. However, an employer can reduce the amount of leave it must provide by the number of paid leave hours – excluding previously accrued hours – it provided an employee on or after March 4, 2020 that employees could use for reasons the law requires or in response to an employee's inability to work due to COVID-19.

Supplemental paid sick leave is in addition to pre-existing paid leave benefits. The law provides that employees need not exhaust sick leave or other leave they accrued before using supplemental paid sick leave hours. Notably, the law prohibits employers from changing any paid off policies on or after May 19, except to provide additional paid leave.

Employees can use – immediately – supplemental paid sick leave for any of the following purposes, unless they can work for home and are healthy enough to do so: 1) Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19; 2) Employee is advised by a health-care provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a health-care provider; 3) Employee experiences symptoms of COVID-19 and is seeking medical diagnosis; 4) Employee is caring for a minor child because the child's school, daycare, or childcare provider is closed or unavailable because of COVID-19 and the employee is unable to secure a reasonable alternative caregiver.

Employers can require employees to follow reasonable notice procedures to use leave, but only for foreseeable absences. Although employers can require employees to identify the basis for requesting leave, they cannot require a doctor's note or other documentation to substantiate an absence.

Employers must pay leave at an employee's regular rate of pay, but may pay leave at two-thirds an employee's regular rate if an employee uses leave to care for another. The maximum value of "personal use" leave is $511 per day ($5,100 overall) and $200 per day ($2,000 overall) for "caregiver" leave. If employment ends and an employee has unused leave, employers need not cash-out such leave.

The law contains replacement worker, retaliation, and waiver prohibitions. Employers cannot require employees to find a replacement as a condition of approving leave. Aside from valid CBA waivers, a waiver by an employee of any or all of the law's requirements is contrary to public policy, void and unenforceable. Employers cannot discharge, reduce in compensation or otherwise discriminate against any employee for: 1) Opposing any practice the law proscribes; 2) Requesting to use or actually using leave; 3) Participating in proceedings related to the law; 4) Seeking to enforce rights under the law by any lawful means; or 5) Otherwise asserting rights under the law.

The ordinance does not designate an agency to interpret or enforce the law. Instead, employees' sole recourse is a private lawsuit in state court where, if they prevail, a court can award actual and punitive damages, reinstatement, reasonable attorney's fees and costs, and any other legal or equitable relief the court deems just and appropriate.

For more information, *see* COVID-19 Supplemental Paid Sick Leave Docks in Long Beach, California.

Los Angeles, California Supplemental Paid Sick Leave Emergency Order

On April 7, 2020, the Mayor of Los Angeles issued an emergency order requiring certain employers to provide employee supplemental paid sick leave. The order took effect immediately and will remain in effect until two calendar weeks after the COVID-19 local emergency ends.

The order applies to private employers with either 500 or more employees in L.A. or 2,000 or more employees in the U.S. It potentially exempts numerous employers, *i.e.*, employers of the following types of employees and/or under the following circumstances: Emergency Personnel; Health Care Worker; Global Parcel Delivery; Generous Existing Benefits (160 hours annually) Certain New Businesses; Government Workers; Businesses that were Closed or Already Provided Leave (14 Days)[1]. The order applies to employees who perform any work in L.A.'s geographic boundaries if employed with the same employer from February 3, 2020 through March 4, 2020, but exceptions may be available to employers with unionized workforces.

[1] This exemption has gone through multiple changes:

If an employee works at least 40 hours per week or the employer classifies the employee as "full time," the employee receives 80 hours, whereas employees who work fewer than 40 hours per week and who an employer does not classify as full time receive an amount no greater than their average two-week pay over the period of February 3, 2020 through March 4, 2020. However, employers can offset the amount of SPSL by the amount of paid leave they provided an employee on or after March 4, 2020, for any reason the order identifies or in response to an employee's inability to work due to COVID-19, but employers cannot count "previously accrued hours" for offset purposes, *e.g.*, if employers voluntarily allowed employees during this period to use their pre-existing L.A. paid sick leave ordinance hours, employers cannot use these hours to offset their SPSL obligations.

It appears employers must use the employee's average rate of pay to calculate the SPSL pay rate. Like the FFCRA, the order addresses the maximum value of SPSL: in no event shall the amount of SPSL paid exceed $511 per day and $5,110 in the aggregate for each employee.

If employees are unable to work or telework, they can use SPSL for the following purposes: 1) Employee takes time off due to COVID-19 infection or because a public health official or healthcare provider requires or recommends employee isolate or self-quarantine to prevent the spread of COVID-19; 2) Employee takes time off work because employee: A) Is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system; B) Needs 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; C) Needs to provide care for a family member whose senior care provider or whose school or child care provider caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public official's recommendation. However, this only applies to an employee who is unable to secure a reasonable alternative caregiver.

Employers must provide SPSL upon an employee's oral or written request. Employers cannot require a doctor's note or other documentation for SPSL use.

In addition to prohibiting any waiver of the order's requirements, employers cannot discharge, reduce compensation of, or otherwise discriminate against an employee for opposing any practice the law proscribes for: 1) Requesting to use or using SPSL; 2) Participating in proceedings related to the law; 3) Seeking to enforce rights under the law by any lawful means; or 4) Otherwise asserting rights under the law. The order designates the Office of Wage Standards to interpret the law.

For more information, *see* The L.A. Story of Supplemental Paid Sick Leave and Los Angeles, California Adopts Rules to Implement Supplemental Paid Sick Leave Order.

Los Angeles County, California Supplemental Paid Sick Leave Ordinance

On April 28, 2020, the Los Angeles County Board of Supervisors enacted an ordinance to require employers with 500 or more employees within the United States to provide supplemental paid sick leave (SPSL) to covered employees until December 31, 2020 (unless the Board extends its applicability).

- Originally, the Order exempted any business or organization that was closed or not operating for a period of 14 or more days due to a city official's emergency order because of the COVID-19 pandemic. Corresponding rules, issued April 11, said the 14 or more days had to be consecutive, on or after March 4, 2020. On May 19, a revision to the Order changes the language to 14 or more consecutive calendar days.
- Originally, the Order's exemption also applied to any business or organization that provided at least 14 days of leave. From April 11 until April 30, the corresponding rules said "Leave may be paid or unpaid and may include days that an Employee is furloughed." On May 19, a revision to the order removes "or provided at least 14 days of leave."

The ordinance covers individuals employed by an employer on April 28, 2020, who perform any work in the county's unincorporated areas. The law does not apply to a food sector worker covered by California Governor's Executive Order N-51-20. Additionally, an employer may exclude employees who are emergency responders or health care providers.

The ordinance provides that parties to a collective bargaining agreement (CBA) can expressly waive any or all of the law's requirements if the waiver is explicitly set forth in the CBA in clear and unambiguous terms.

An employer's obligation to provide SPSL begins on March 31, 2020. However, the ordinance's offset provision says that employers who provided additional paid leave for COVID-19 related purposes, above and beyond an employee's regular or previously accrued leaves (*e.g.*, sick or personal leaves), can reduce their SPSL obligation by each hour so provided on or after March 31, 2020, for any of the reasons the law requires. This might suggest that, notwithstanding the March 31 reference, the Board's true intent is to impose a prospective, not retroactive, paid leave obligation.

Employees who works at least 40 hours per week or who their employer classify as full time receive 80 hours, which employers calculate using an employee's highest average two-week pay over the period of January 1 through April 28, 2020. For employees who work fewer than 40 hours per week and who their employer do not classify as full time, they receive an amount no greater than their employee's average two-week pay over the period of January 1 through April 28, 2020.

SPSL is in addition to any paid sick leave an employee receives under California's pre-COVID-19 paid sick leave law, the Healthy Workplace Healthy Family Act of 2014. Additionally, the ordinance provides that employers cannot require employees to use other paid or unpaid leave, paid time off, or vacation time an employer provides them before using, or in lieu of using, SPSL.

Employees can use SPSL if they cannot work or telework because: 1) A public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19; 2) The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. Notably, the County appears to broadly interpret this provision as it provides the example of an employee that is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system; 3) The employee needs to care for a family member (*i.e.*, an employee's child, parent, or spouse) who is subject to a federal, state, or local quarantine or isolation order related to COV1D-19 or has been advised by a health care provider to self-quarantine related to COVID-19; or 4) The employee takes time off work because the employee needs to provide care for a family member whose senior care provider or whose school or child care provider ceases operations in response to a public health or other public official's recommendation. Employers must provide SPSL upon an employee's request in writing, which includes, but is not limited to, an email or text message. Employers can require a doctor's note or other documentation to support an employee's need to use SPSL.

The ordinance does not contain a standalone pay rate calculation provision. Rather, it appears to require that employers pay SPSL at an employee's "average" rate of pay, based on damages available. However, the law does not tell employers how to determine the average. Using the same timeframe employers use to calculate the *amount* of leave for the *pay rate* of leave may produce inequities because "full" time employees get the highest average, whereas non-full-time employees get the average, two week pay over the period of January 1 through April 28, 2020. What the ordinance does directly address is the daily and overall amounts, which cannot exceed $511 and $5,110, respectively.

Employers cannot discharge, reduce in compensation, or otherwise discriminate against any employee for: 1) Opposing any practice the law proscribes; 2) Requesting to use or actually using SPSL; 3) Participating in proceedings related to the law; 4) Seeking to enforce rights under the law by any lawful

means; and/or 5) Otherwise asserting rights under the law. Additionally, employees cannot waive their rights under the Ordinance. An employee's sole recourse for a violation is to file a civil lawsuit in state court, where, if the employee prevails, a court can order reinstatement, award back pay and SPSL unlawfully withheld, order other appropriate legal or equitable relief, and award reasonable attorneys' fees and costs.

For more information, *see* Supplemental Paid Sick Leave (Immediately) Required in Unincorporated Los Angeles County, California.

Oakland, California Supplemental Paid Sick Leave Ordinance

On May 12, 2020, Oakland enacted a law requiring supplemental paid sick leave for COVID-19 purposes ("COVID-19 EPSL"). The requirements take effect immediately and will remain through December 31, 2020, unless the city extends the law's end date.

The law covers all private employers, but exempts small employers with fewer than 50 (per FAQ, full- or part-time) employees (though this does not include certain franchisees or janitorial employers). Additionally, the ordinance allows employers of health care provider and/or emergency responder employees to elect to exempt themselves if they keep certain information.

The ordinance covers employees entitled to the state minimum wage that performed at least 2 hours of work in Oakland after February 3, 2020, though exceptions may be available to employers with unionized workforces, if certain conditions exist.

Employers must provide 80 hours of COVID-19 EPSL to employees who worked at least 40 hours per week in Oakland over the period of February 3, 2020 through March 4, 2020 or at any point thereafter, or who the employer classifies as full time. Other employees must receive an amount of leave equal to the average number of hours they worked in Oakland over 14 days during the period of February 3, 2020 through March 4, 2020 (per FAQ, for full-time employees who only partially work in Oakland, this calculation standard applies). FFCRA-covered employers may offset their Oakland leave obligation by FFCRA sick leave hours they provided. Additionally, employers that provided additional COVID-19 leave to employees *might* qualify for a partial exemption, as *might* those that offer generous paid leave (at least 160 hours), although this exemption is not straightforward, so employers should consult counsel to determine whether and how it might apply. Employees may elect to use COVID-19 EPSL before any other leave the employer provides voluntarily or per the pre-existing Oakland paid sick leave ordinance, and employers cannot require employees to use other leave before they use COVID-19 EPSL.

All covered employers must immediately provide leave to employees who are unable to work or telework for the following reasons: 1) Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; 2) Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; 3) Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; 4) Employee is 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 due to concerns related to COVID-19; 5) 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; 6) Employee is experiencing any other substantially similar condition specified by the U.S. Secretary of Health and Human Services in consultation with the Secretary of Labor and Secretary of the Treasury; 7) To enable the employee is to care for a family member who has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19; and 8) To take time off work because the employee: A) Is at least 65 years old; B) Has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system; C) Has any condition identified by an Alameda County, California or federal public health official as putting the public at heightened risk of serious illness or death if exposed to COVID-19; or D) Has any condition certified by a healthcare professional as putting the Employee at a heightened risk of serious illness or death if exposed to COVID-19. Covered family members includes a child, grandchild, grandparent, parent, sibling, spouse, plus an individual to whom the employee is responsible for providing or arranging care and any individual whose close association is the equivalent

of a family member. Employees may elect to use the leave in one-hour increments and intermittently, and employers cannot require them to use leave in more than one-hour increments. However, per FAQ, "reasonable workplace safety concerns and/or federal regulations may prevent an employee from being present at their worksite intermittently if they have been exposed or potentially exposed to COVID 19."

For foreseeable absences, employees should provide notice of the need for use of the leave as soon as practicable. Employers can take reasonable measures to verify or document leave use, but cannot require a doctor's note unless employees use leave because they have a condition a healthcare professional certifies puts them at a heightened risk of serious illness or death if exposed to COVID-19 (employees need not disclose their condition and must only indicate they are at a heightened risk). Employers cannot require employees to incur more than $5 in costs to demonstrate their eligibility, and cannot prevent access to or use of leave to obtain documentation they need for FFCRA reimbursement or tax credit purposes. Employees can certify their need for leave via virtual or telephonic healthcare provider appointments.

Employers must pay employees the same hourly rate with the same benefits, including health benefits, they normally earn, which cannot be less than the Oakland minimum wage but cannot exceed $511 per day or $5,110 overall. Employers must pay employees no later than the payday for the next regular payroll period after the one in which the employee takes leave, which cannot be more than 14 days after the employee takes leave. However, per FAQ, when employment ends, unused EPSL has no cash value and need not be paid out.

Within three days after the city publishes and makes available the mandatory notice, employer must provide the notice, in all languages spoken by more than 10% of employees, in a manner calculated to reach all employees, including, but not limited to, via electronic communication or a conspicuous posting at the workplace or in a web-based or app-based platform.

The law prohibits interfering with, restraining, or denying leave rights, and retaliating or discriminating against an employee for exercising protected rights. Additionally, employers cannot require employees to find a replacement worker when they use leave, and employees cannot waive the law's requirements (aside from via a CBA).

Employees can file complaints with the city or a private lawsuit and, if successful, can receive, *e.g.*, back pay, reinstatement and/or injunctive relief, penalties, reasonable attorney's fees and costs.

Some other notable provisions include the following. Employers cannot reduce or eliminate contributions to employee health benefits while an employee is using leave. Employers cannot rely on U.S. Department of Labor rules, interpretations, or guidance when deciphering the ordinance unless the ordinance expressly permits the practice or these items would further the ordinance's purpose. Finally, if an employer lays off an employee, it must immediately cash-out all accrued, unused paid sick leave under the pre-existing paid sick leave ordinance. Per FAQ, a layoff "includes any employer-initiated separations from employment that is not for good cause," *e.g.*, a separation due to economic reasons; they also provide examples of what does not constitute a layoff, *e.g.*, a discharge due to poor performance or misconduct. The FAQs clarify employers need not cash out leave for employees who resign. Under Oakland's "general" PSL ordinance, the largest amount of PSL an employer must allow an employee's leave bank to contain is 72 hours. The FAQs say that, generally, an employer need not cash out more than 72 "general" PSL hours. The FAQs also go over the rate of pay at which cash-out must occur, which simply discusses rate of pay standards in the "general" PSL ordinance.

For more information, *see* Bay Bridge Series: Oakland Enacts COVID-19 Supplemental Paid Sick Leave Ordinance & Oakland, California Releases Emergency Paid Sick Leave FAQs.

Sacramento, California Worker Protection, Health, And Safety Act

On June 30, 2020, Sacramento enacted the Sacramento Worker Protection, Health, and Safety Act, which became operative on July 15, 2020 (15 days after the June 30th effective date) and remains in effect through March 30, 2021 (originally December 31, 2020, but amended on December 15, 2020). In addition to mandating employers provide supplemental paid sick leave (SPSL), it also grants employees the right to refuse work under certain conditions and requires employers to implement certain safety practices and protocols.

The ordinance applies to employers with 500 or more employees nationally. Under the law, covered employees are people who work in Sacramento for an employer and are an employee per California law. However, an employer of an employee who is a health care provider or emergency responder may exclude those employees from the ordinance's requirements.

Notably, there is no potential exception for companies with unionized workforces.

For determining who constitutes a "family member" for whom employees may use SPSL, the ordinance uses the definition in California's generally applicable paid sick leave law, the Healthy Workplace Healthy Family Act, *i.e.*, a child, grandchild, grandparent, parent, sibling, spouse or domestic partner.

SPSL is in addition to any other paid sick leave, paid time off, or vacation time an employer provides by statute, policy, or collective bargaining agreement (CBA). An employer cannot require an employee to use other accrued paid sick leave, paid time off, or vacation time before using SPSL.

Employers must provide 80 hours of SPSL to full-time employees, *i.e.*, those who work 40 or more hours per week or who an employer classifies as full time. The ordinance considers other employees "part-time" and they receive an amount of SPSL hours equal to the number of hours they work on average over a 2-week period. To calculate this amount, employers use the number of hours the employee worked each week during the six months immediately preceding the law's effective date, multiplied by two. However, the ordinance contains two offset provisions. First, if an employer granted additional paid sick leave – beyond any paid sick leave, paid time off, or vacation time afforded an employee by statute, policy, or CBA – since March 19, 2020 specifically for use for COVID-19-related matters the ordinance describes, it can credit those hours against the number of SPSL hours the law requires. Second, if California Executive Order N-51-20 – COVID-19 paid sick leave for certain food sector workers – applies, the employer may use those leave hours as an offset.

An employee who is unable to work or telework may use SPSL for the following purposes: 1) Employee is subject to quarantine or isolation by federal, state, or local order due to COVID-19, or is caring for a family member who is quarantined or isolated due to COVID-19; 2) A health care provider advises an employee to self-quarantine due to COVID-19 or the employee is caring for a family member who is so advised; 3) Employee chooses to take off work because the employee is over the age of 65 or is considered vulnerable due to a compromised immune system; 4) Employee is off work because the employer it works for or a specific work location temporarily ceases operation due to a public health order or other public official’s recommendation; 5) Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; or 6) Employee is caring for a minor child because a school or daycare is closed due to COVID-19.

For foreseeable absences only, an employer may require the employee to follow reasonable notice procedures. If an employer requests, an employee must provide the basis for requesting SPSL, but a doctor's note or other documentation is not required.

Generally, employer must pay SPSL at the employee's regular rate of pay. However, for an employee who uses SPSL to care for a family member, the employer may pay two-thirds of the employee's regular rate of pay. The maximum amount an employer must pay is $511 per day or $5,110 overall; however, for an employee who uses SPSL to care for a family member, the maximum amounts are $200 per day and $2,000 overall. Note that, when employment ends, employers need not cash out unused SPSL.

An employer cannot: 1) Request an employee to waive a right under the law (any such waiver is contrary to public policy, void and unenforceable); 2) Require an employee to find a replacement worker as a condition of using SPSL; 3) Issue any discipline or attendance points based on a no-fault attendance policy for an employee's SPSL use; and/or 4) Discharge, discipline, discriminate against, retaliate against, or reduce the compensation of any employee for seeking to exercise the employee's rights under the law by any lawful means by participating in proceedings related to the law.

A unique aspect of the ordinance is the only SPSL private right of action available is for retaliation violations. Moreover, employees can only file suit, within one year of a violation, after they provide written notice to the employer of the provision alleged to have been violated and all facts supporting the alleged violation and give the employer 15 days from receipt of that written notice to cure any alleged violation. Assuming a lawsuit proceeds, and an employee prevails, the court can award actual damages, punitive damages, reinstatement, front and back pay, other legal or equitable relief, as well as attorneys' fees and costs. Otherwise, the ordinance cross-cites to pre-existing city law concerning administrative enforcement, which appears to fall to the city attorney or another department that can enforce ordinances. Sacramento has a sliding scale for administrative penalties that vary based on conduct, and it appears the most logical penalty is $100 to $999.99 per violation, with each day a violation continues or occurs constituting a separate violation.

Finally, any employer who receives financial assistance from the city through any program designed to provide financial assistance to businesses due to COVID-19 must certify that it complies with the ordinance as a condition of receiving funds. An employer that is determined to have violated the law must refund any such financial assistance it received.

For more information, *see* California Fireworks: Sacramento, Santa Rosa, and San Mateo County Enact Emergency Paid Sick Leave Ordinances.

Sacramento County, California Worker Protection, Health, And Safety Act Of 2020

On September 1, 2020, Sacramento County, California enacted the Worker Protection, Health, and Safety Act of 2020, which requires not just that employers provide supplemental paid sick leave (SPSL), but also grants employees the right to refuse work under certain conditions and requires employers to implement certain safety practices and protocols. Although the ordinance takes effect 30 days later, on October 1, 2020, employers need not implement what the law requires until 15 days after the effective date, *i.e.*: October 16, 2020. Moreover, the law will remain in effect through March 31, 2021 (originally December 31, 2020, but amended on December 15, 2020).

The new law will apply in the county's unincorporated areas, meaning it will not apply in the City of Sacramento.

The ordinance applies to employers with 500 or more employees nationally. Under the law, covered employees are people who work in Sacramento County's unincorporated areas for an employer and are an employee per California law. However, an employer of an employee who is a health care provider or emergency responder may exclude those employees from the ordinance's requirements. Notably, there is no potential exception for companies with unionized workforces.

For determining who constitutes a "family member" for whom employees may use SPSL, the ordinance uses the definition in California's generally applicable paid sick leave law, the Healthy Workplace Healthy Family Act, *i.e.*, a child, grandchild, grandparent, parent, sibling, spouse or domestic partner.

SPSL is in addition to any other paid sick leave, paid time off, or vacation time an employer provides by statute, policy, or collective bargaining agreement (CBA). An employer cannot require an employee to use other accrued paid sick leave, paid time off, or vacation time before using SPSL. Employers must provide 80 hours of SPSL to full-time employees, *i.e.*, those who work 40 or more hours per week or who an employer classifies as full time. The ordinance considers other employees "part-time," who are entitled to an amount of SPSL hours equal to the number of hours they work on average over a two-week period. To calculate this amount, employers use the number of hours the employee worked each week during the six months immediately preceding the law's effective date, multiplied by two.

The ordinance contains two offset provisions that may reduce the amount of SPSL an employer needs to provide to its employees. First, if an employer granted additional paid sick leave – beyond any paid sick leave, paid time off, or vacation time afforded an employee by statute, policy, or CBA – since March 19, 2020, specifically for use for COVID-19-related matters the ordinance describes, it can credit those hours against the number of SPSL hours the law requires. Second, if California Executive Order N-51-20 – COVID-19 paid sick leave for certain food sector workers – applies, the employer may use those leave hours as an offset.

An employee who is unable to work or telework may use SPSL for the following purposes: 1) employee is subject to quarantine or isolation by federal, state, or local order due to COVID-19, or is caring for a family member who is quarantined or isolated due to COVID-19; 2) a health care provider advises an employee to self-quarantine due to COVID-19 or the employee is caring for a family member who is so advised; 3) employee chooses to take off work because the employee is over the age of 65 or is considered vulnerable due to a compromised immune system; 4) employee is off work because the employer it works for or a specific work location temporarily ceases operation due to a public health order or other public official’s recommendation; 5) employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; or 6) employee is caring for a minor child because a school or daycare is closed due to COVID-19.

For foreseeable absences only, an employer may require the employee to follow reasonable notice procedures. If an employer requests, an employee must provide the basis for requesting SPSL, but a doctor's note or other documentation is not required.

Generally, an employer must pay SPSL at the employee’s regular rate of pay. However, for an employee who uses SPSL to care for a family member, the employer may pay two-thirds of the employee’s regular rate of pay. The maximum amount an employer must pay is $511 per day or $5,110 overall; however, for an employee who uses SPSL to care for a family member, the maximum amounts are $200 per day and $2,000 overall. Note that, when employment ends, employers need not cash out unused SPSL.

An employer cannot: 1) Request an employee to waive a right under the law (any such waiver is contrary to public policy, void, and unenforceable); 2) Require an employee to find a replacement worker as a condition of using SPSL; 3) Issue any discipline or attendance points based on a no-fault attendance policy for an employee’s SPSL use; and/or 4) Discharge, discipline, discriminate against, retaliate against, or reduce the compensation of any employee for seeking to exercise the employee’s rights under the law by any lawful means by participating in proceedings related to the law.

Currently, which county agency, and how the county, will enforce the ordinance is less than clear. Unlike the City of Sacramento law, which expressly references one pre-existing statute on enforcement, the county law references an entire chapter. However, what is clear is that criminal penalties will not

attach to a violation, and employees can file a lawsuit. Employees can file suit within one year of a violation, but only after they provide written notice to the employer of the provision alleged to have been violated and all facts supporting the alleged violation and give the employer 15 days from receipt of that written notice an opportunity to cure any alleged violation. Assuming a lawsuit proceeds, and an employee prevails, the court can award actual damages, punitive damages, reinstatement, front and back pay, other legal or equitable relief, as well as attorneys' fees and costs.

Finally, any employer that receives financial assistance from the county through any program designed to provide financial assistance to businesses due to COVID-19 must certify that it complies with the ordinance as a condition of receiving funds. An employer that is determined to have violated the law must refund any such financial assistance it received.

For more information, *see* Employer Compliance Deadline Approaching for New Sacramento County, California Supplemental Paid Sick Leave Ordinance.

San Francisco, California Public Health Emergency Leave Ordinance

On April 17, San Francisco enacted an emergency ordinance that requires private employers with 500 or more employees to provide paid public health emergency leave (PHEL) during the COVID-19 public health emergency. The ordinance took effect that day. As an "emergency" ordinance, the law remains in effect for 60 days unless reenacted. To date, San Francisco has three times reenacted the ordinance. Currently, the ordinance is set to expire on December 13, 2020 unless reenacted again. Notably, employers do not receive tax credits or monetary relief for providing leave.

The ordinance will apply to private employers with 500 or more employees worldwide, and to any person providing labor or services for pay, including part-time and temporary employees who perform work in San Francisco, employees who perform limited work in San Francisco as telecommuters or by occasionally performing work in San Francisco (*e.g.*, making deliveries) if they work 56 or more hours in San Francisco in a calendar year, and welfare-to-work program participants. Unlike the federal FFCRA, the ordinance provides a potential exception for employers with unionized workforces.

Employers must provide full-time (*i.e.*, 40 hours per week) employees (as of February 25, 2020) 80 hours of PHEL, and part-time employees (as of February 25, 2020) must receive a number of hours equal to their average number of hours over a two-week period during the 6-month period ending on February 25, 2020, including hours they look leave (a similar standard applies for new employees hired after February 25, but use the hire date and the date the employee takes leave). Unlike the federal FFCRA, the ordinance allows employers to offset the amount of leave by the amount of paid leave they provided employees on or after February 25, 2020, for any reason the ordinance identifies, but employers cannot count "previously accrued hours" for offset purposes, *e.g.*, if employers voluntarily allowed employees during this period to use their pre-existing San Francisco Paid Sick Leave Ordinance (PSLO) hours, employers cannot use those hours to offset leave obligations. Additionally, employers can offset the amount of leave by the amount of supplemental paid sick leave they provide per the statewide executive order.

Employees who are unable to work – either at their customary place of work or by means of telework – can use PHE leave for a number of reasons when they are working or scheduled to work in San Francisco. It is important, first, to highlight a key difference between the FFCRA and the PHELO: employers must make PHE leave available, regardless of whether or when the employee is scheduled to work, *e.g.*, the law applies to furloughed employees (but does not apply to laid off employees or to those that quit or retire). Under these circumstances, the amount of leave employees can take in a week cannot exceed their average number of hours in a one-week period during the 6-month period that ended on February 25, 2020, including hours they took leave.

The PHELO defines qualifying event as including: 1) An employee being subject to an individual or general federal, state, or local quarantine or isolation order related to COVID-19; 2) An employee being advised by a health care provider to self-quarantine; 3) An employee experiencing symptoms associated

with COVID-19 and seeking a medical diagnosis; 4) An employee caring for a family member who is subject to an order described in 1, has been advised as described in 2, or is experiencing symptoms as described in 3; 5) An employee caring for a family member whose school or place of care has been closed, or whose care provider is unavailable, due to the public health emergency; and 6) An employee experiencing any other substantially similar condition specified by the local health officer or the U.S. Secretary of Health and Human Services.

However, an employer of an employee who is a health care provider or an emergency responder (defined almost identically to FFCRA rules) may elect to limit such employee's use of PHEL, but at a minimum such an employee may use PHEL due to either of the following: A) A health care provider (defined per the FMLA) advises the employee to self-quarantine; 2) The employee is experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and does not meet the CDC guidance for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

Employers cannot require employees to take leave in increments of more than one hour. Employers can require employees to follow reasonable notice procedures, but only when the need for leave is foreseeable. Employers can require employees to identify the basis for leave, but they cannot require the employee to disclose health information and cannot require other documentation, including but not limited to a doctor's note.

For pay rate purposes, the ordinance incorporates standards in the San Francisco Paid Sick leave Ordinance. For nonexempt employees, employers must either calculate the rate in the same manner as the regular rate of pay for the workweek in which the employee uses leave (whether or not the employee actually works overtime in that workweek) or calculate the rate by dividing the employee's total wages – excluding overtime premium pay – by the employee's total hours worked in the full pay periods of the prior 90 days of employment. However, if an employee has two jobs with different pay rates, or fluctuating pay for the same job, the guidelines create a unique pay calculation: the average hourly rate for the six months before the date an employee takes leave. For overtime-exempt employees, employers calculate the rate in the same manner they calculate wages for other forms of paid leave time. Employers must pay leave no later than the payday for the next regular payroll period after an employee takes leave.

Within three days after San Francisco OLSE publishes and makes available a new mandatory notice (which occurred on April 18), employers must make that notice available in a manner calculated to reach all employees: by conspicuously posting at the workplace; via electronic communication; and/or by conspicuously posting on an employer's web- or app-based platform. The notice must be in English, Spanish, Chinese, and any language spoken by at least 5% of employees who are, or were prior to the public health emergency, at the workplace or job site. The ordinance also contains a paystub requirement: to the extent feasible, on the same written notice state law requires, employers must set forth the amount of leave available. For four years, employers must retain records documenting leave taken, work schedules, and hour worked (except for overtime-exempt employees).

Employers cannot require employees to find a replacement worker, require employees to change their schedule instead of use leave, or interfere with employees attempting to or exercising their rights, and policies cannot count leave use as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. Additionally, the anti-retaliation provision not only prohibits discharging, demoting, suspending, discriminating, or taking adverse action, but also bars any reduction of employee benefits, due to an employee's exercise of their rights. The PSLO administrative and civil enforcement provisions apply to the PHELO, so employees can file private lawsuits and recover numerous types of damages, and OLSE can assess administrative penalties.

For more information, *see* San Francisco Expected to Require Employers with 500 or More Employees to Provide Paid Public Health Emergency Leave, San Francisco (Again) Passes Public Health Emergency Leave Ordinance, with Changes, and San Francisco Mayor Signs Public Health Emergency Leave Ordinance & Agency Issues Guidelines.

San Francisco Workers and Families First Program

On March 16, 2020, San Francisco, California announced its Workers and Families First Program will provide up to $10 million in public funding to offset costs employers incur if they allow employees who have exhausted employer-provided paid leave benefits, or who have exhausted or are ineligible for federal or state supplemental sick leave, to take additional leave for reasons the ordinance and emergency rules allow employees to use mandatory paid sick leave. This program is available to all private employers, with up to 20% of funding reserved for employers with 50 or fewer employees. For each qualifying employee provided additional leave, the program provides up to 40 hours of relief paid at the San Francisco minimum wage ($15.59 per hour), meaning the employer must pay the difference between the minimum wage and an employee's regular wage.

San Jose, California Emergency Paid Sick Leave Ordinance

On April 7, 2020, the San Jose, California enacted an "urgency" ordinance that requires covered employers to provide emergency paid sick leave. Two weeks later, on April 21, 2020, it enacted an identical "regular" ordinance. The ordinance applies to employers with 500 or more employees, and to employers with fewer than 50 employees that partially exempt themselves from the federal FFCRA's childcare leave provisions (the extent of which, we do not know), and to employees who work at least two hours in San Jose who leave their home to perform essential work per a county shelter-in-place order. Unlike the federal FFCRA, the ordinance provides a potential exception for construction industry employers with unionized workforces that uses the potential exemption under California's paid sick leave law, but it is unclear whether the city will strictly apply the state law test or instead apply a San Jose variation.

Under the ordinance, employees can use emergency paid sick leave (EPSL) for the following reasons: 1) An employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19; 2) An employee is advised by a healthcare provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a health-care provider; 3) An employee experiences symptoms of COVID-19 and is seeking medical diagnosis; 4) An employee is caring for a minor child because a school or daycare is closed due to COVID-19. However, employers need not allow employees to use EPSL if they are teleworking.

The ordinance provides full-time employees with 80 hours of EPSL, whereas part-time employees receive an amount of hours equal to the number of hours they work on average over a two-week period. One of the biggest components of the ordinance is that it provides a full or partial exemption based on the amount of paid time off employees are already provided. Specifically, the ordinance does not apply to employers that provide employees with some combination of paid leave that is at least equivalent to the amount of EPSL the law requires. For employers that provide leave, but in a lesser amount, they must make up the difference between what they provide and what the law requires.

The ordinance sets two different pay rate standards based on the reasons employees use EPSL. If they use EPSL for personal reasons, employers must pay employees' their regular rate of pay. However, employees that use EPSL to care for another person receive two-thirds their regular rate of pay. Additionally, similar to the FFCRA, the maximum value for personal-use EPSL is $511 a day (aggregate of $5,110) and to care for another the maximum value is $200 a day (aggregate of $2,000).
The San Jose Office of Equality Assurance (OEA) will implement and enforce the ordinance, and can establish reasonable requirements to inform employees of their rights, including requiring employers to post notices.

Finally, the ordinance' sole prohibition is that employers cannot require an employee to find a replacement as a condition of using EPSL.

For more information, *see* Knowing the Way to San Jose's Emergency Paid Sick Leave Ordinance.

San Mateo County, California Supplemental Paid Sick Leave Ordinance

The San Mateo County Board of Supervisors enacted its ordinance on July 7, 2020, though the paid sick leave obligation in the county's unincorporated areas began on July 8, 2020 and will remain in effect through (as of December 8, 20201) June 30, 2021 (originally December 31, 2020).

The ordinance applies to employers with 500 or more employees in the U.S., the District of Columbia, or any U.S. territory or possession. Covered employees are those who are or have been required to perform work in the county's unincorporated areas since January 1, 2020. Moreover, the ordinance creates a presumption of employment, with the burden on a company to demonstrate a worker is actually an independent contractor. The ordinance excludes, however, food sector workers covered by California Executive Order N-51-20, a statewide emergency paid sick leave measure. Additionally, for companies with unionized workforces, parties to a collective bargaining agreement (CBA) can waive the law's requirements if the agreement explicitly sets forth the waiver in clear and unambiguous terms.

Employers must provide full-time employees who they normally schedule to work 40 or more hours per week 80 SPSL hours. Part-time employees employers normally schedule to work fewer than 40 hours per week receive an amount no greater than the average number of hours they work in a two-week period, which employers calculate using the period of January 1 through July 7, 2020.

SPSL is in addition to any paid sick leave the employer provides per California's generally applicable law, the Healthy Workplace Healthy Family Act, or per preexisting time off they provided before March 16, 2020. Employers cannot require employees to use other paid or unpaid time off the employer provides before, or in lieu of, SPSL. However, employers can reduce the amount of SPSL they must provide by the amount of additional paid leave for COVID-19 purposes they gave an employee between March 17 to June 30, 2020, or supplemental leave they gave the employee under another jurisdiction's law (*e.g.*, San Francisco's Public Health Emergency Leave Ordinance). Moreover, per the ordinance, if an employer provided such leave at rate of pay or hourly accrual rate less than that what the ordinance requires, such amounts or hours are offset against such rates and hours as the employee would have received under the ordinance.

The ordinance contains a list of covered uses generally, and another more limited list for employers of health care provider, aviation security, and emergency responder employees.

- Generally, employees can use leave if they cannot work or telework because: 1) A health care provider advises an employee to isolate or self-quarantine to prevent the spread of COVID-19; 2) An employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 3) The employee needs to care for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID19, or a health care provider advises the individual to self-quarantine related to COVID-19, or the individual is experiencing COVID 19 symptoms and is seeking a medical diagnosis; or 4) The employee takes time off work because of a need to provide care for an individual whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other public official’s recommendation. Under the ordinance, an "individual" is an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if quarantined or self-quarantined, or whose senior care provider or whose school or childcare provider is closed or is unavailable in response to a public health or other.
- Certain companies may offer more limited leave if they are an employer of an employee who is a healthcare provider or emergency responder (both defined per the FFCRA). Additionally, they can limit leave if they employ an aviation security worker (one who performs work on behalf of the federal

Transportation Security Administration) and make a good faith determination that granting the employee care-for-others leave would render them unable to meet staffing level requirements required to ensure staffing shortages do not adversely affect airport operations. These employers can restrict leave to when employees are unable to work at their customary place of work or telework due to: 1) A health care provider advises an employee to isolate or self-quarantine to prevent the spread of COVID-19; or 2) The employee is experiencing COVID-19 symptoms, is seeking a medical diagnosis, and does not meet the Centers for Disease Control and Prevention's guidance for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

An employer must provide leave upon an employee's written request, which includes but is not limited to email and text, but may request information supporting a request according to the FFCRA.

When employee use SPSL, employers must pay them their regular rate of pay according to the FFCRA. However, unlike the FFCRA, there is no lower two-thirds the regular rate pay amount for certain absences. The maximum amount of SPSL is $511 per day and $5,110 in the aggregate.

A prospective waiver by an employee of any or all of the provisions of the law is contrary to public policy, void and unenforceable. Additionally, employers cannot discharge, reduce in compensation or otherwise discriminate against any employee for: 1) Opposing any practice the law prohibits; 2) Requesting to use or using SPSL; 3) Participating in proceedings related to the law; 4) Seeking to enforce rights under the law by any lawful means; or 5) Otherwise asserting rights under the law.

The ordinance does not designate an agency to enforce or interpret the ordinance. Instead, employees can file a lawsuit in state court and, if they prevail, a court can award them reinstatement if unlawfully discharged, back pay and SPSL unlawfully withheld (calculated at the employee's average rate of pay), other legal or equitable relied the court deems appropriate, and reasonable attorneys' fees and costs.

For more information, *see* California Fireworks: Sacramento, Santa Rosa, and San Mateo County Enact Emergency Paid Sick Leave Ordinances.

Santa Rosa, California Temporary Sick Leave Ordinance

On July 7, 2020, Santa Rosa enacted its temporary sick leave ordinance, which took effect that day and will remain in effect through December 31, 2020, though the city can extend its duration. At times the ordinance's actual text is unclear, so, where possible, our discussion relies on supplemental documents presented to the council explaining the proposal – the staff report by the Economic Development Division Director (EDDD) and Chief Assistant City Attorney, and an EDDD presentation – and discussions the council had during its meeting.

The ordinance generally covers all private employers. However, employers with fewer than 50 employees can opt not to allow employees to leave for childcare-related reasons if doing so would jeopardize the viability of the business as a going concern. Under the ordinance, an employee is a person employed by an employer who has worked at least two hours in Santa Rosa. Employers must provide paid sick leave to each employee who performs "allowed or essential work," which means work activities and services permitted in Sonoma County Public Health Officer orders.

Under the ordinance, full-time employees get 80 paid sick leave hours, whereas part-time employees get an amount equal to the number of hours they work on average over a two-week period. Employees who work part of their hours in Santa Rosa get paid sick leave hours equal to the number of hours they work on average over a two-week period in Santa Rosa. The ordinance does not define full- or part-time, or discuss the time period employers use to determine an employee's two-week average. Employees cannot carry over leave between years.

The ordinance contains a provision titled "Exemption/Offset." This provision says the ordinance does not apply to an employer that has provided employees, on July 7, with some combination of paid personal leave at least equivalent to the paid sick leave the ordinance requires. An employer that provides some combination of paid sick leave amounting to less than what the ordinance requires must comply with the law to the extent of the deficiency. Although this is language similar to the language in San Jose's emergency paid sick leave ordinance, the Santa Rosa ordinance's provision also provides that the temporary leave is in addition to leave employers normally provide. During the council meeting, staff regularly contended the provision is intended to be a complete or partial offset for employers that provided additional COVID-19 related leave.

Unlike the federal EPSLA and numerous mini-FFCRA ordinances, there is no requirement that an employee be unable to work and/or telework to use leave, which employees can use for the following purposes: 1) employee is subject to quarantine or isolation by federal, state, or local order due to COVID-19; 2) employee is advised by a health-care provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a health-care provider; 3) employee experiences symptoms of COVID-19 and is seeking medical diagnosis; 4) employee is caring for someone who is quarantined or isolated, or otherwise unable to receive care, due to COVID-19; or 5) employee is caring for a minor child because a school or daycare is closed, or childcare provider is unavailable, due to COVID-19. Concerning "otherwise unable to receive care," based on a discussion during the city council meeting, this requirement is akin to absences for childcare provider unavailability, though for other individuals such as the elderly or those with disabilities (the council uses "someone" to align with the federal EPSLA). However, unlike other mini-FFCRA ordinances, this provision was included alongside a covered use other than childcare.

The ordinance's sole provision on this topic provides that a written note from a health care provider who advises self-quarantine is not required. Notwithstanding this being the only item addressing documentation, during the city council meeting it was made clear that its inclusion was simply to reinforce standards in the federal EPSLA, which the ordinance follows.

Employers must pay employees for paid sick leave at their regular rate, up to $511 a day, not to exceed an aggregate amount of $5,110. There is no lower two-thirds the regular rate amount for certain absences, so employers covered by the federal EPSLA and this ordinance must pay the ordinance's higher rate. When employment ends, employers need not cash out unused SPSL, which is unavailable once the ordinance expires.

Employers cannot require employees to find a replacement worker as a condition of using leave. Additionally, employers cannot discharge, reduce in compensation or otherwise discriminate against any employee for opposing any practice the law prohibits, for requesting to use or using paid sick leave, for participating in proceedings related to the law, for seeking to enforce rights under the law by any lawful means, or for otherwise asserting rights under the law.

The ordinance does not designate an agency to enforce or interpret the ordinance. Rather, this task falls to the courts. Employees can file a lawsuit in state court and, if successful, a judge can award them: reinstatement if unlawfully discharged; paid sick leave unlawfully withheld; other legal or equitable relief the court deems appropriate; and reasonable attorneys' fees and costs.

For more information, *see* California Fireworks: Sacramento, Santa Rosa, and San Mateo County Enact Emergency Paid Sick Leave Ordinances.

Sonoma County, California Supplemental Paid Sick Leave Ordinance

On August 18, 2020, enacted, on an urgency basis, an emergency paid sick leave ordinance that took effect immediately and will remain in effect until December 31, 2020, unless the law on which it is modeled, the federal Families First Coronavirus Response Act (FFCRA), is extended, in which case this "mini-FFCRA" law's applicability will extend for an identical period of time.

Sonoma County's law applies to employers with 500 or more employees in the United States. Additionally it covers any employee who has worked for an employer for more than two hours in the county's unincorporated areas. The law presumes a worker is an employee and employers must prove an individual's independent contractor status according to California law, *i.e.*, "AB 5." There is no potential exception for employees who are health care providers or emergency responders. Additionally, there is no exception available for employers with unionized workforces.

Employees can use supplemental paid sick leave when they have a personal need to be absent from work or to care for an "individual," *i.e.*, an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if quarantined or self-quarantined, or if their senior care provider, school, or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation. However, an individual does not include persons with whom the employee has no personal relationship. The ordinance intends this term to be interpreted in a manner consistent with the FFCRA.

Under the ordinance, full-time employees normally scheduled to work 40 or more hours per week are entitled to up to 80 hours of SPSL. Part-time employees normally scheduled to work fewer than 40 hours week are entitled to an amount of SPSL no greater than the employee's average number of work hours in a two-week period, calculated over the past six months. Employees of joint employers are only entitled to the total aggregate amount of leave specified for employees of one employer.

Generally, subject to the law's "offset" provision, SPSL is in addition to any paid sick leave employees receive under California's pre-COVID-19 statewide paid sick and safe time law, and any preexisting paid time off (vacation, sick and/or PTO) provided to employees before March 16, 2020. However, under the "offset" provision, to the extent an employee has at least 80 hours of accrued paid sick leave as of August 18, 2020, or at least 160 hours of a combination of paid sick leave, vacation and PTO (combined leave), the obligation to provide SPSL is deemed satisfied; but, to the extent accrued paid sick leave is less than 80 hours, or accrued combined leave is less than 160 hours, an employer must provide SPSL to the extent of such deficiency. An employer cannot require an employee to use any other paid or unpaid leave, sick pay, paid time off, or vacation time provided by the employer to the employee before an employee uses SPSL.

Covered Uses: Under the ordinance, employees can use SPSL when they cannot work, or telework, because: 1) Employee has been advised by a health care provider to isolate or self-quarantine to prevent the spread of COVID-19; 2) Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19; 3) Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 4) Employee needs to care for an Individual who is subject to a federal, state, or local quarantine or isolation order related to COVID19, or has been advised by a health care provider to self-quarantine related to COVID-19, or is experiencing COVID 19 symptoms and is seeking a medical diagnosis; or 5) Employee needs to provide care for an individual whose senior care provider, school, or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation. As noted, the ordinance covers, rather than potentially excepts, employees who are health care providers and emergency responders (both terms defined per the FFCRA). These employees can use SPSL for all the above reasons.

An employer must provide SPSL upon an employee's written request, which includes, but is not limited to, email and text. An employer may require employees to follow reasonable notice procedures only for foreseeable absences. Employers may only take reasonable measures to confirm an employee's SPSL eligibility in accordance with the FFCRA. Employers may require employees to identify the basis for which they are requesting leave, but cannot require employees to furnish a doctor's note or other supporting documentation.

Employers pay SPSL at the employee's regular rate of pay, as calculated per the FFCRA. However, the maximum amount of pay for all types of absences is $511 per day and $5,110 in the aggregate. When employment ends, employers need not cash-out unused SPSL.

Employers must provide employees notice of their rights by posting a notice in English and Spanish in the workplace, on any intranet or app-based platform or via email. Because the county does not designate an agency to interpret the ordinance, the responsibility for creating a notice lies exclusively with employers. For at least three years, employers must keep a record of each employee's name, hours worked, and pay rate. Although the law does not expressly require employers to keep records about leave use, to protect against allegations of non-compliance, employers should keep such records.

Any prospective waiver by an employee of any or all of the law's provisions is contrary to public policy, void and unenforceable. Employers cannot require employees to find a replacement worker as a condition of using leave. Finally, an employer cannot discharge, reduce in compensation, or otherwise discriminate against any employee for: 1) opposing any practice the law prohibits; 2) requesting or using SPSL; 3) participating in proceedings related to the law; 4) seeking to enforce rights under the law by any lawful means; 5) otherwise asserting rights under the law.

No agency will enforce the law, so the only recourse for employees claiming a violation is to file a lawsuit in state court. If they prevail, they can receive: A) reinstatement if unlawfully discharged; B) back pay and SPSL unlawfully withheld, calculated at the employee's average rate of pay; C) other legal or equitable relief a court deems appropriate; D) reasonable attorney's fees and costs.

For more information, *see* Sonoma County, California Enacts Emergency Paid Sick Leave Ordinance.

Colorado Healthy Families & Workplaces Act

Note: On September 21, 2020, the state labor department enacted temporary-emergency rules that affect the HFWA, Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules").

On July 14, 2020, Colorado enacted the Healthy Families & Workplaces Act, which contains three paid leave programs: 1) COVID-19 paid sick leave (COVID-19 PSL); Paid Sick & Safe Time (PSST); and 3) Public Health Emergency Leave (PHEL). That day, the Colorado Department of Labor announced the law would take effect on July 15, 2020. COVID-19 PSL is in effect from July 15 through December 31, 2020.

Immediately, the state labor department issued guidance concerning COVID-19 PSL. However, the guidance did not clarify whether, to what extent, and how employers must comply. Later, on August 3, 2020, it revised the guidance.

In terms of COVID-19 PSL, the HFWA requires all employers in Colorado to comply with the federal Emergency Paid Sick Leave Act (EPSLA) in the Families First Coronavirus Response Act (FFCRA), including those to whom the EPSLA applies already. Accordingly, employers must provide full-time employees 80

paid sick leave hours and a proportionate amount to part-time employees, and allow employees to use leave for all reasons in the EPSLA (see above for the EPSLA's basic requirements).

Except for employees subject to the federal Railroad Unemployment Insurance Act, the law covers all employees, including those the EPSLA allows an employer to exempt, *e.g.*, health care provider employees. However, the state labor department interprets the HWFA's limited exemption for employers with unionized workforces to apply to COVID-19 PSL. Accordingly, the law does not apply to employees covered by a bona fide collective bargaining agreement (CBA) in effect on the law's effective date if the CBA provides for equivalent or more generous paid sick leave for employees the CBA covers. Similarly, for employees covered by a bona fide CBA that is initially negotiated or negotiated for the next CBA after the law's effective date, the law does not apply to such employees if the law's requirements are expressly waived in the CBA and the CBA provides for equivalent or more generous paid sick leave for employees the CBA covers. If an exemption does not apply, the law addresses how employer signatories to multi-employer CBAs can comply with the law, which is similar to the federal EPSLA.

The state labor department interprets the HWFA to require employers to comply with both the federal EPSLA and HWFA provisions outside the statute requiring COVID-19 PSL. When both the EPSLA and HWFA address an issue, employers must comply with the more employee-friendly standard. The two most notable differences include the minimum increment of use and the rate of pay.

- The HWFA allows employees to use leave in hourly increments unless the employer allows employees to take leave in smaller increments, whereas, for the most part, under the EPSLA employers need not allow employees to use leave in anything less than full-shift increments.
- Although the HWFA generally uses the EPSLA's two-tier approach to how much employers must pay employees – 100% or two-thirds of their regular rate, depending on the type of absence – the laws differ concerning what that "regular" rate is. Under the HFWA, employers must pay employees their same hourly rate or salary, with the same benefits (including health care benefits), they earn normally during hours worked; however, employers can exclude overtime, bonuses, and holiday pay. Aside from the general standard, the HFWA only addresses pay rate issues for employees that earn commissions. Employers must pay commission-only employees a rate no less than the applicable minimum wage. For employees paid an hourly, weekly, or monthly wage and paid on a commission basis, employers must them a rate of pay equal to their hourly, weekly, or monthly wage (or the applicable minimum wage, if greater). Accordingly, for a qualifying absence, employers must calculate the rate of pay using EPSLA standards, and using HFWA standards, then pay the employee the higher rate.

Two potential differences between the EPSLA and how the state labor department interprets the HFWA involve the amount of leave employers must provide. First, the state labor department says employers can offset their paid leave obligation if they gave employees paid leave in 2020 for EPSLA-covered reasons. Second, the department appears to suggest employers might satisfy their COVID-19 PSL obligation via a paid leave policy adopted on or after April 1, 2020. Although many employers will view these interpretations favorably, some words of caution.

- Concerning the offset, a provision does not exist expressly in the HFWA or the EPSLA, the law with which the HFWA says employers must comply. However, even assuming the state labor department can create an offset via its regulatory authority, questions remain concerning the logic it uses to calculating the offset amount. In two examples where an employee receives the same amount of pre-HFWA leave that qualifies for an offset (80 hours of child care leave paid at two-thirds the employee's regular rate), the department concludes an employer receives a lower offset if, after the HFWA takes effect, an employee requests leave connected to an absence for which the HFWA requires payment at 100% of an employee's regular rate. Rather than focusing on how the amount of pre-HFWA leave would be evaluated had it been provided post-HFWA, the department bases the offset on the maximum amount of payment, *i.e.*, employees get up to either 80 hours (100% pay rate) or the equivalent of $56^{1/3}$ hours (2/3 pay rate).

- Concerning using a paid leave policy, the EPSLA requires employers to provide emergency paid sick leave in addition to any benefit they provide employees. Moreover, the HFWA discusses an employer's ability to use an existing paid leave policy to comply with respect to PSST and PHEL only.

Accordingly, before relying on the state labor department's interpretation, employers should consult knowledgeable counsel to discuss risk.

The HFWA requires employers to notify employees of their paid leave rights by providing employees either a copy of the department's guidance or the department-created poster. For at least COVID-PSL purposes, for 2 years employers must keep records of employees' hours worked and leave used.

The state labor department says all the HFWA's prohibitions apply to COVID-19 PSL. Accordingly, employers cannot: 1) require employees to waive their rights; 2) require employees to find a replacement worker when they use leave; 3) count leave as an absence that could lead to discipline or other adverse action; and/or 4) retaliate against employees for exercising their rights. Aggrieved employees can file a complaint with the state labor department or a lawsuit (but only if they submit a complaint to the employer or department and give the employer 14 days to respond) and, if successful, they can receive back pay and other appropriate relief, such as reinstatement, promotion, pay increase, payment of lost wage rates, and liquidated damages, along with reasonable costs and attorney fees. Additionally, the state labor department can assess penalties for notice and posting violations.

For more information, *see* Colorado Passes Law Requiring Employers to Provide Three Types of Paid Sick Leave.

Colorado Emergency Paid Sick Leave Rules for COVID-19 Testing

LAW EXPIRED: Due to enactment of the Colorado Healthy Families & Workplaces Act on July 14, 2020, the Colorado Department of Labor announced the HELP Rules would expire after July 14, 2020.

March 11, 2020 is when the Colorado Department of Labor and Employment released its Health Emergency Leave with Pay ("Colorado HELP") Rules. Subsequently, on March 26, April 3 and 27, 2020, the Department amended the rules, which remain in effect for 30 days or for the duration of the declared state of emergency (whichever is longer – up to 120 days).

Under Colorado HELP Rules, covered employers must provide paid sick leave days to employees for qualifying purposes:

- March 11 – 26: Employees with flu-like symptoms who are being tested for COVID-19 (up to 4 paid sick leave days).
- March 26 – April 26: Employees with flu-like symptoms who are being tested for COVID-19 and/or under health care provider instructions to quarantine or isolate due to a risk of having COVID-19 (up to 4 paid sick leave days).
- April 27 – Forward: Employees with flu-like or respiratory illness symptoms who are being tested for COVID-19 and/or a health care provider or authorized government official instructs the employee to quarantine or isolate due to a risk of having COVID-19 (up to two weeks (80 hours) of paid sick leave days).

Per the FAQ, these are calendar days: "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 maximum is Thursday through Sunday -- and the employee gets paid only for those days they actually would have worked." If employers already offer a sufficient amount of paid leave, they need not provide additional paid sick leave unless employees exhausted such leave and then experience a qualifying event.

Unless they are too ill to communicate, employees must: 1) give notice of their absence as soon as possible; 2) give notice of getting a COVID-19 test, or receiving instructions to quarantine or isolate within 24 hours of being prescribed the test or instructions; and 3) provide documentation an employer requests when their illness ends or they return to work, whichever is sooner. Employers may request the employee to provide documentation from the health care provider who prescribed the COVID-19 test or instructed the employee to quarantine or isolate or from the provider of the COVID-19 test. Before April 27, 2020, the state labor department did not require the documentation to be in a particular form; however, as of April 27, it says employees may provide their own written statement instead of documentation directly from a health care provider. Notable, before and after April 27, 2020, rules provide that employers cannot terminate an employee for an inability provide documentation during a qualifying absence.

Before April 27, 2020, the paid leave entitlement ends when employees receive a negative COVID-19 test result. Beginning April 27, 2020, the paid leave entitlement ends when employees receive a negative COVID-19 test result once the employee has been fever-free for 72 hours, with other symptoms resolving as well, but not earlier than after 7 calendar days off from work (or 10 calendar days for health care workers).

Before April 27, 2020, the rules required employers to provide leave at the employee's regular rate of pay. However, as of April 27, 2020, employers must provide leave at two-thirds of the employee's regular rate of pay.

A failure to provide paid sick leave is a failure to pay wages, subjecting an employer to the liability and penalties similar to those it would face under Colorado wage payment and wage & hour laws.

The emergency rules cover employers engaged in, or employees working in (As of April 27, 2020), in the following industries or workplaces: 1) Child care; 2) Community living facilities; 3) Education at all levels and related services, including but not limited to cafeterias and transportation to, from, and on campuses; 4) Elective health services (As of April 27, 2020); 5) Food & beverage manufacturing (As of April 3, 2020); 6) Food services; 7) Home health care (working with elderly, disabled, ill, or otherwise high-risk individuals); 8) Leisure and hospitality; 9) Nursing homes; 10) Offices and office work (As of April 27, 2020); 11) Personal care services (As of April 27, 2020); 12) Real estate sales and leasing (As of April 27, 2020); 13) Retail establishments (Other) (As of April 27, 2020); and 14) Retail establishments that sell groceries (As of March 26, 2020).

As of April 27, 2020, the rules provide that, if employers are subject to federal, state, and/or local laws, they must comply with the law providing the greatest protection or setting the highest standard.

For more information, *see* Colorado Emergency Rule Requires Up to 4 Paid Sick Leave Days for Employees with Flu-Like Symptoms Who Are Tested for COVID-19, New FAQs Clarify Colorado Emergency Paid Sick Leave Rules, and Colorado Expands Coverage and Amount of Leave under Health Emergency Leave with Pay (HELP) Rules.

District of Columbia Emergency Paid Leave Amendment

On April 10, 2020, the mayor of the District of Columbia signed the first of many emergency and/or temporary bills that amend the District's Accrued Sick and Safe Leave Act to require certain employers to provide emergency paid leave. D.C continues to pass legislation – some items identical to their predecessors and passed simply to extend how long the provisions will remain in effect, and others contain substantive changes that differ from the original legislation – so the only potential "end" date is TBD: when the COVID-19 emergency ends. The law applies to employers with between 50 and 499 employees that are not health care providers, and to employees who began work at least 15 days before the leave request.

Employees can use emergency paid leave for any of the reasons in the federal FFCRA, *i.e.*, when an employee is unable to work or telework due to the following: 1) Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; 2) Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; 3) Seek medical diagnosis if the employee is experiencing coronavirus symptoms; 4) Care for an individual who is subject to a federal state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; 5) Care for a child if a school or place of care is closed, or a child care provider is unavailable, due to COVID-19 precautions; 6) Employee is experiencing any other substantially similar condition specified by the Health and Human Services Secretary of in consultation with the Secretaries of Treasury and Labor

Employers must provide full-time employees an amount of emergency paid leave sufficient to ensure the employee is able to remain away from work for 2 full weeks of work up to 80 hours, whereas part-time employees receive the usual number of hours the employee works in a two-week period. However, an employer may require that an employee exhaust any available leave under federal or D.C. law or an employer's own policies before using additional leave the law requires. Note: This provision changed on May 27, 2020 as follows. An employee may only use paid leave concurrently with or after exhausting any other paid leave to which the employee may be entitled for covered reasons under federal or D.C. law or an employer's policies.

- If an employee elects to use paid leave concurrently with other paid leave, the employer may reduce the monetary benefit of the paid leave by the amount of the monetary benefit the employee will receive for paid leave taken under federal or D.C. law or the employer' policies.
- If an employee elects to use paid leave after exhausting other paid leave, the employer may reduce the number of hours of paid leave an employee may use by the number of hours of paid leave taken under federal or D.C. law or the employer's policies.

Another tweak to the law that occurred on May 27, 2020, involved the pre-existing paid sick leave law's "using existing policies" provision, which allows employers with paid time off policies to use those to comply with the law if certain requirements are met; the latest amendment says the terms and conditions of an employer's policy are presumed equivalent if they allow an employee to (among other characteristics) access and use emergency paid leave.

An employer cannot require an employee to provide more than 48 hours' notice of the need to use leave, or more than reasonable notice of the need to use leave in the event of an emergency. Additionally, an employer cannot require an employee to provide certification of the need to use leave unless the employee uses 3 or more consecutive working days of paid leave. When certification is required, employers cannot require the employee to provide it until one week after the employee's return to work. An employer that does not contribute payments toward a health insurance plan on behalf of the employee cannot require certification from the employee who uses paid leave.

Emergency paid leave is paid at the employee's regular rate of pay. For employees who do not have a regular rate of pay, divide the employee's total gross earnings, including all tips, commission, piecework, or other earnings earned on an irregular basis for the most recent 2-week period that the employee worked, by the number of hours the employee worked during that 2-week period. In no case can the rate of pay fall below the D.C. minimum wage.

Until May 27, 2020, the law provided that an employee who seeks to use paid leave cannot be subject to threats or retaliation, including verbal or written warnings. Additionally, under the law an employee cannot be required to search for or identify another employee to perform the work hours or work of the employee using paid leave.

An employer alleged to have violated the law must be provided an opportunity to cure the violation, which must last no more than 5 business days from the date the employer is notified in writing of the potential violation by D.C.

For more information, *see* DC Council Adopts Expanded Sick Leave, Unemployment Amendments.

Nevada Coronavirus Protocols for Public Accommodations (Paid Time Off)

On August 11, 2020, Nevada Governor Sisolak signed Senate Bill No. 4 (SB 4) into law. Within 20 days of the governor's approval, SB 4 requires the director of the Department of Health and Human Services to adopt initial regulations mandating that some but not all employers in Nevada establish standards and protocols aimed at limiting the transmission of COVID-19. The new regulations will apply to "public accommodations facilities." Under SB 4, a "public accommodations facility" is: a hotel and casino, resort, hotel, motel, hostel, bed and breakfast facility or other facility offering rooms or areas to the public for monetary compensation or other financial consideration on an hourly, daily or weekly basis. Note further that the relevant provisions of SB 4 apply only to counties whose populations meet or exceed 100,000 people. According to the Legislative Counsel's Digest of the bill, this includes Clark and Washoe Counties.

The legislation also provides that the director's regulations will apply during "any period in which a public health emergency due to SARS-CoV-2 has been declared by the Governor and remains in effect." In addition, the regulations apply on each day that the rate of positive COVID-19 test results for the county exceeds 5% in any rolling 14-day period within the preceding 90 days, or on each day that the number of new cases in the county exceeds 100 per 100,000 residents in the same periods.

Under SB 4, the director must adopt regulations mandating that covered public accommodations facilities establish three sets of protocols to limit the spread of the novel coronavirus and mitigate its effects [Note: To date, the regulations simply mirror the statutory requirements]. The third set of required protocols requires covered facilities to "establish, implement and maintain a written SARS-CoV-2 response plan designed to monitor and respond to instances and potential instances of SARS-CoV-2 infection among employees and guests." The response plan must designate a person or set of persons to oversee and carry out the plan and its COVID-19 testing requirements. The plan must further designate an area "where employees will check in every day to receive contact-free temperature measurement and review questions to screen for exposure to SARS-CoV-2."

The response plan mandates testing of employees in four circumstances: 1) Each new employee and each employee returning for the first time since March 13, 2020, must undergo testing, if testing is available; 2) Each employee known to have had close contact2 with a guest or employee diagnosed with COVID-19 must be informed of the exposure within a maximum of 24 hours or as soon as practicable and must be tested; 3) Each employee that has a reasonable belief or has been advised that they have been in close contact with someone with COVID-19 must be tested; 4) Each employee who discloses that they are experiencing symptoms of COVID-19 must be tested.

Employees who are tested for reasons 2, 3, or 4 are entitled to:

- Up to three days of paid time off to await testing and results; and
- Additional paid time off if documentation shows a delay exceeding three days in testing or receiving test results.

Notably, this paid time off entitlement applies each time an employee is tested for reason 2, but only the first instance the employee is tested for reason 3 and 4.

SB 4 also mandates that where an employee tests positive for the novel coronavirus or is otherwise diagnosed with COVID-19, the response plan must allow the employee "to take at least 14 days off" if the employee "is working or has been recalled to work at the time of the result or diagnosis." The plan must provide that "at least 10" of those 14 days will consist of "paid time off."

The paid time off benefits must not be deducted from a paid time off benefit provided by the employer by virtue of NRS 608.0197 or other policy or contract. However, it may be deducted from paid sick leave provided pursuant to the emergency paid sick leave provisions of the Families First Coronavirus Response Act. The paid leave benefits are to be calculated at the employee's base rate of pay. Although the law does not define "base rate," the Nevada Labor Commissioner "recommends" using the federal FFCRA's "regular rate" calculation. *Technically*, the Labor Commissioner does not have enforcement powers under SB 4, but some public health officials indicated they would ask for the Commissioner's help to interpret and enforce SB 4's employment-related provisions, like paid time off.

Notably, employers operating covered facilities may submit a request to the director to increase or decrease the days provided under this type of leave. The director may grant the request, "if it is consistent with the recommendations of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services concerning time off for employees who test positive for SARS-CoV-2 or are otherwise diagnosed with COVID-19."

SB 4 provides that its provisions relating to the required response plan do not preclude an employee who is exposed to the novel coronavirus or who is diagnosed with COVID-19 from "choosing to perform his or her duties remotely instead of taking time off if the job duties of the employee are conducive to remote work." The legislation does not expressly state whether an employer operating a covered facility may require such an employee to work remotely, however.

For more information, *see* Some Hospitality Employers in Nevada Must Establish Virus-Combatting Protocols Including Cleaning, Testing, and Paid Time Off.

New York State Paid and/or Unpaid Leave During COVID-19 Quarantine or Isolation

Note: Employees have other legal rights and can access other state benefits other than the employer-provided paid leave requirements addressed below.

On March 18, 2020, New York enacted a law that requires employers to provide paid and/or unpaid leave to an employee subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 issued by the state, state or local health department, or any authorized government entity unless either the employee is deemed asymptomatic or has not been diagnosed with a medical condition and physically can work while under order, whether remotely or by similar means. Note that, per the **FAQ**, employees are ineligible for paid leave if they are working from home while quarantined; however, if employees were under quarantine before the law took effect and remain in quarantine afterwards, they can take quarantine leave.

The type and amount of leave varies based on how many employees an employer has, but employers must provide leave without an employee losing accrued sick leave.

- **10 or Fewer Employees**
  - Generally: Unpaid sick leave and other benefits a law may provide for the order's duration.

    - Net income exceeds $1 million in previous tax year: 5 paid sick leave days then unpaid leave for the order's duration.
- **11-99 Employees**: 5 paid sick leave days then unpaid leave for the order's duration.
- **100 or More Employees**: 14 days of paid sick leave for the order's duration (implied that remainder is unpaid).

Per the **FAQ**, "[t]he number of paid days is calendar days, and the pay required should represent the amount of money that the employee would have otherwise received for the 5 or 14 day period."

Employees are ineligible for paid sick leave if they return to the U.S. after traveling to a country for which the CDC issued a level 2 or 3 travel health notice, travel not part of employment or at an employer's direction, and they had notice of the travel health notice and the state law's requirements before traveling. On June 26, 2020, Governor Cuomo issued Executive Order 202.45, which modifies the law to provide that employees are also ineligible if, after June 25, 2020 and through July 26, 2020, they voluntarily travel to a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a 7-day rolling average, and which the State Health Commissioner has designated as meeting these conditions, and travel was not taken as part of employment or at the employer's direction. More recently, in early November 2020, the state labor department updated its FAQ to note "If you voluntarily travel to any state other than a contiguous state [Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont] for more than 24 hours you will not be eligible for NY's COVID-19 quarantine leave benefits if the travel was not taken as part of your employment or at your employer's discretion." However, employees can use employer-provided accrued leave; or, if the employee has no, or insufficient, leave, employers must provide unpaid sick leave for the order's duration.

If the federal government provides sick leave (and/or employee benefits) for employees related to COVID-19, state law benefits are unavailable. However, if state law would provide sick leave (and/or employee benefits) that exceed federal leave/benefits, the employee can claim additional sick leave (and/or employee benefits) under the state law in an amount that represents the difference between federal and state benefits.

For more information, *see* New York Legislation Provides New Leave Time for Employees Subject to COVID-19 Quarantine, Effective Immediately; *see also* Daniel Gomez-Sanchez, Lauren J. Marcus, Amber Spataro and Shirley Bi, Quarantine Quandaries – How NY, NJ and CT's Quarantine Period May Impact Employers, Littler Insight (June 29, 2020).

Note: Special rules apply to health care employees. *See* New York State Department of Health and New York State Department of Labor, Guidance on Use of COVID-19 Sick Leave for Health Care Employers (May 17, 2020) & (June 25, 2020); *see also* Daniel Gomez-Sanchez, Ira Wincott, and Sanjay Nair, NY Agencies Issue Joint Guidance on COVID-19 Paid Leave for Health Care Workers, Littler Insight (May 26, 2020) & New York Agencies Issue Guidance on COVID-19 Sick Leave for Health Care Workers, Littler ASAP (July 1, 2020).

Pennsylvania

Philadelphia, Pennsylvania Pool & Healthcare Employee Pandemic / Epidemic Pay & Medical Expenses

On September 9, 2020, Mayor Kenney signed into law File # 200306, which took effect immediately and permanently amends the pre-existing, generally applicable citywide paid sick and safe time ordinance, the Promoting Health Families & Workplaces Ordinance (PHFWO), by adding new section 9-4117: Compensating Pool Employees and Healthcare Employees During a Declared Pandemic or Epidemic Event. On November 16, 2020, the Mayor's Office of Labor (MOL) published corresponding regulations. Unfortunately, in many respects the regulations are less than clear. Additionally, in various parts the standards the rules establish appear to contradict the ordinance.

The new statute applies to any employer that provides healthcare services and utilizes the services of pool employees or healthcare employees. The law defines a "pool employees" as any health care professional, other than an employee of a temporary placement agency, who works only when the individual indicates availability for work and who has no obligation to work when not indicating availability. Additionally, it defines a "health care employee" as any person who has full- or part-time employment within a healthcare organization, including but not limited to hospitals, nursing homes, and home healthcare providers. Finally, under the law, a "health care professional" is any person licensed under federal or Pennsylvania law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel. Notably, although generally the PHFWO contains a collective bargaining exception for employers with unionized workforces, it does not apply for purposes of section 9-4117.

The law requires that pool and healthcare employees are compensated for lost wages and medical expenses if they contract a communicable disease during a pandemic or epidemic affecting the City of Philadelphia declared to exist by the World Health Organization, the Centers for Disease Control and Prevention, or other recognized public interest health organization. To receive these benefits, the employee must have worked for / been in the service of the employer at least 40 hours in the 3 months before the disease.

Employers must reimburse an employee for all lost wages related to the disease (isolation, treatment and recovery) when the employee is unable to work. The law requires reimbursement for the number of days the employee is unable to work, payable at the employee's normal rate, in an amount equal to the number of work days the employee would have worked if the disease had not been contracted, which must be equal to the average number of days worked per week during the 3 months before contracting the disease.

Additionally, the employer must either reimburse the employee for all medical expenses related to treatment for the communicable disease or provide such care as needed at its facility at no cost to the employee.

Currently, it is unclear whether various pre-existing PHFWO provisions will apply to this new statute, *e.g.*, when employers can request documentation supporting an absence. We hope the enforcement agency clarifies this issue via regulations or FAQ.

For more information, *see* Philadelphia Pandemic Laws Require Additional Paid Leave for Employees and Gig Workers, Other Pay and Benefits for Healthcare Workers.

Philadelphia, Pennsylvania Public Health Emergency Leave

On September 17, 2020, Philadelphia, Pennsylvania Mayor Phil Kenney signed File Number 200303, an amendment to the city's generally applicable paid sick and safe time law, the Promoting Healthy Families and Workplaces Ordinance (PHFWO). The amendment requires new public health emergency leave (PHEL) for employees, gig workers, and others who do not receive leave under the federal Families First Coronavirus Response Act (FFCRA). The emergency leave requirements take effect immediately, but generally will expire on December 31, 2020.

What Qualifies as a Public Health Emergency: A public health emergency (PHE) is an emergency related to a public health threat, risk, disaster or emergency that affects Philadelphia that is made or issued by a federal, state or local official. How long a PHE remains in effect will depend on the start-end dates the declaration or proclamation uses, or when an official terminates the declaration or proclamation.

Covered Employers & Employees: The law not only applies to an "employer," but also to a “hiring entity.” Under the law, covered workers are employees and individuals who perform at least 40 hours of work in Philadelphia in a year for one or more hiring entities, including the following individuals: various domestic workers; individuals providing services under the participant-directed and agency homecare model; individuals who work for food delivery networks, including drivers; individuals who work for transportation network companies, including drivers; certain health care professionals.

Notably, the law presumes an individual performing work for a hiring entity is an employee, unless the hiring entity demonstrates all the following conditions are met: A) The individual is free from the hiring entity's control and direction in connection with the performance of the labor or services, under the contract and in fact; B) The individual performs labor or services that are outside the hiring entity’s usual course of business; and C) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.

For hiring entities with unionized workforces, any or all of the law's requirements may be waived via collective bargaining agreement (CBA) that is in effect. The waiver must be clear, unmistakable, and in the CBA, and the CBA must provide a comparable paid leave benefit.

Amount of Leave: A hiring entity must provide public health emergency leave when a public health emergency is declared or proclaimed, or on the covered individual’s hiring date during a public health emergency.

- Individuals who work 40 hours or more per week receive 80 hours or an amount of leave equal to their average hours worked over a 14-day period (see below), whichever is greater, up to a maximum of 112 hours. Bona fide executive, administrative, professional, and outside sales employees are assumed to work 40 hours in each workweek unless their normal workweek is less than 40 hours, in which case the amount of leave is based on their normal workweek.
- Individuals who work fewer than 40 hours per week receive an amount of leave equal to the amount of hours they worked on average in a 14-day period.
    - For individuals whose hours vary from week to week, a hiring entity must use the following calculation to determine the average hours in a 14-day period:
        - A number equal to the average hours the individual worked per day over the 6-month period ending on the date the public health emergency was declared, multiplied by 14, including any hours for which the individual took leave of any type;
        - If the individual did not work over such period, the individual's reasonable expectation at the time of hiring of the average hours the individual would normally receive in a typical 14-day period.

Notably, the Philadelphia law takes a unique approach when individuals work for multiple hiring entities (as one might expect with, *e.g.*, drivers for food delivery or transportation network companies). The mayor's Office of Labor must establish a centralized system for calculating PHEL attributed to each hiring entity, then collect PHEL funds from hiring entities and distribute them to covered workers. However, until that system is established, an individual is entitled to PHEL from each hiring entity for whom the individual performed work during the public health work period according to forthcoming regulations.

PHEL is not necessarily a one-time benefit. Rather, it is available each time a public official declares a public health emergency based on a different emergency health concern or declares a second public health emergency for the same emergency health concern more than one month after the first emergency officially ended.

Another unique aspect of Philadelphia's law is that hiring entities might be able to use existing benefits to comply. The law does not require a hiring entity to change existing policies or provide additional paid leave if its existing policy provides an amount of paid sick leave that meets or exceeds the amount of PHEL the law requires that may be used for the same purposes and under the same conditions the law requires. Some city councilmembers observed that the law did not clarify whether hiring entities that used a combined paid time off program (*e.g.*, PTO individuals can use for vacation and sick time) would need to provide additional leave. Councilmembers agreed to work with the city's labor and legal departments to clarify the language to indicate that no additional leave time would be required in such circumstances.

Covered Uses: A covered individual may use PHEL at any time during the public health emergency (and possibly for one month following the conclusion of such emergency) when unable to work for one or more of the following circumstances: 1) the individual is subject to a federal, state, or local quarantine or isolation order related to the public health emergency; 2) a health care provider advises the individual to self-quarantine due to concerns related to a public health emergency; 3) the individual is experiencing symptoms related to a public health emergency and is seeking a medical diagnosis; 4) caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to the public health emergency, or who a health care provider advises self-quarantine due to concerns related to a public health emergency; 5) caring for a child of a covered individual if the child's school or place of care has been closed, or the childcare provider is unavailable, due to precautions taken in accordance with the public health emergency response; or 6) experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services in consultation with the United States Secretary of the Treasury and the United States Secretary of Labor.

A hiring entity is not required to allow a covered individual to use PHEL if the individual can reasonably perform work remotely, considering all relevant circumstances that affect the individual's ability to perform remote work.

To the extent a federal or state law requires hiring entities to provide paid leave or paid sick time related to a public health emergency, hiring entities may require PHEL to run concurrently with such leave unless the other law prohibits concurrent use of paid leave. Related, the law requires hiring entities to provide additional PHEL to the extent the Philadelphia law's requirements exceed the requirements of the other laws.

Individuals can use PHEL in the smaller of hourly increments or the smallest increment that the entity's payroll system uses to account for absences or use of other time.

When leave ends, hiring entities must return covered individuals to the position they held when leave began.

Requesting, Verifying & Documenting Leave: Individuals must provide notice to a hiring entity as practicable and as soon as feasible, but only when the need for leave is foreseeable. A hiring entity can request that a covered individual submit a self-certified statement asserting that leave was used for a lawful purpose.

Rate of Pay: Hiring entities must pay PHEL at the worker's regular rate of pay, and with the same benefits, including health care benefits, as the individual normally earns from the hiring entity, which cannot be less than the state minimum wage. Interestingly, the law cites to state overtime law for purposes of calculating the "regular" rate. For tipped employees, the law incorporates pay standards in regulations implementing Philadelphia's fair workweek ordinance. If paid at least $7.25 per hour by the hiring entity, the rate of pay is the hourly amount paid to the individual by the hiring entity. However, if paid less than $7.25 per hour by the hiring entity, the rate of pay is a pre-established rate of $11.78 per hour.

Prohibitions: A hiring entity cannot require an individual to find coverage for any shift during which the individual uses PHEL. Additionally, it or any other person cannot interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right under the law.

Hiring entities cannot take retaliatory personnel action or discriminate against an individual for exercising protected rights, including but not limited to, using PHEL, filing a complaint or informing any person about any entity's alleged violation, cooperating with the mayor's Office of Labor in its investigations of alleged violations, and informing any person of the individual's right under the law. Protections apply to a person who mistakenly but in good faith alleges a violation. Additionally, there is a rebuttable presumption of retaliation whenever a hiring entity discharges, suspends, demotes, or takes other adverse action against a person within 90 days of the individual (a) filing a complaint alleging a violation with the Office of Labor or a court, (b) informs any person about an entity's alleged violation, (c) cooperates with the Office of Labor or others investigating or prosecuting any alleged violation, or (d) opposes any unlawful policy, practice, or act.

The law prohibits a hiring entity's absence control policy from counting PHEL as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action, though a hiring entity can take action against an individual who uses PHEL for a reason the law does not permit.

End of Employment: A hiring entity need not cash out unused PHEL upon an individual's termination, resignation, retirement, or other separation from employment. However, if it rehires the individual within six months of separation, the entity must reinstate the previous amount of PHEL the individual had when the working relationship ended.

Notice, Posting & Recordkeeping Requirements: Within 15 days of the law taking effect, a hiring entity must provide individuals notice of their rights.2 Entities must give notice that: (a) individuals are entitled to PHEL, the amount of PHEL, and the terms of its use guaranteed under the law; (b) retaliation against individuals who request or use PHEL is prohibited and that individual has the right to file a complaint or bring a civil action if PHEL is denied or the individual is retaliated against for requesting or PHEL. Entities comply with this requirement by either supplying each individual a notice that contains the required information or conspicuously displaying a poster that contains the required information in an accessible place in each establishment where such employees are employed. The notice must be provided in English and in any language that is the first language spoken by at least 5% of the employer's workforce. If employees telework or work through a web-based platform, or the hiring entity has no physical location, the entity must furnish notice through electronic communication or a conspicuous posting in the web-based platform.

For a period of two years, entities must keep records documenting hours worked, PHEL taken by employees and payment for PHEL. If the entity does not maintain or retain adequate records, or allow the enforcement agency access, it is presumed that the employer has violated the law, absent clear and convincing evidence otherwise.

Penalties & Enforcement: An individual may file a complaint with the mayor's Office of Labor within a year of the date the person knew or should have known of the alleged violation. Alternatively, within two years from the date an alleged violation occurred, an aggrieved individual, or any entity whose member is aggrieved by a violation, can file an individual or class action lawsuit. However, an individual need not first file an administrative complaint before filing a lawsuit if a public health emergency has been declared.

Presumably, given the amendments incorporate the pre-existing paid sick and safe time ordinance’s enforcement provision, it also incorporates those penalties and damages. If so, that means a willful notice and posting violation is subject to a civil fine in an amount not to exceed $100 for each separate offense. Failing to pay for PHEL used, unlawfully denying PHEL, and retaliation claims carry potential criminal penalties. An individual can recover the full

amount of unpaid PHEL, any wages and benefits lost or other damages suffered as the result of the violation of the law, and an equal amount, up to a maximum of $2,000, as liquidated damages. Additionally, the individual can recover reasonable attorney's fees, and receive appropriate legal or equitable relief, including, but not limited to, reinstatement, back pay and injunctive relief.

For more information, *see* Philadelphia Pandemic Laws Require Additional Paid Leave for Employees and Gig Workers, Other Pay and Benefits for Healthcare Workers.

Pittsburgh, Pennsylvania Temporary Emergency COVID-19 Paid Sick Leave

On December 9, 2020, Mayor Bill Peduto signed into law File # 2020-0927, which, effective immediately, creates a right to emergency COVID-19 paid sick leave for certain employees until the state or city COVID-19 emergency disaster declaration expires, whichever is sooner, though employees will be able to use COVID-19 Sick Time until 1 week following the official termination or suspension of the public health emergency.

The ordinance applies to employers with 50 or more covered employees, *i.e.*, employees who are working in Pittsburgh after December 10, normally work in Pittsburgh but, due to COVID-19, are teleworking from another location, or work from multiple (or mobile) locations but spend 51% or more of their time in Pittsburgh. Moreover, a separate, but related provision requires that employees be employed for the previous 90 days before they receive COVID-19 Sick Time.

COVID-19 Sick Time is in addition to any paid leave or statutory paid sick leave an employer provides an employee (and employers cannot change their paid leave benefits on or after December 10). The amount of COVID-19 Sick Time employers must provide depends on whether employees work 40 or more, or fewer than 40, hours per week. For 40+ hour employees, 80 hours. Other employees must receive an amount equal to the time they are scheduled to work or work on average in a 14-day period. For employees whose schedule varies from week to week, they receive an amount equal to the average number of hours scheduled over the past 90 days of work, including hours they were on leave. The law assumes FLSA-exempt executive, administrative, professional, and outside sales employees work 40 hours per week; however, if their normal workweek involves fewer hours, employers use that number for calculations.

Under the ordinance, employers can offset their COVID-19 Sick Time by the amount of COVID-19 leave they gave employees via their policy after March 13 or because of a state or federal law (*e.g.*, FFCRA). If the amount of Pittsburgh COVID-19 Sick Time exceeds the amount of statutory or employer-provided COVID-19 leave, employers must make up the difference. Additionally, if Pittsburgh's ordinance and another law (*e.g.*, FFCRA) both cover an absence, employers can require employees to use leave concurrently.

Note: Although the Temporary Emergency COVID-19 Paid Sick Leave Ordinance is separate from – rather than an amendment to (like in Philadelphia) – Pittsburgh's pre-COVID Paid Sick Days Act (PSDA), the ordinance affects PSDA compliance obligation for employers who comply via an accrual-based system. If an employee's need to use leave under the PSDA directly relates to COVID-19, employers must provide the employee up to 40 PSDA hours (less, obviously, if the employee had been accruing leave before the need for leave arose).

Employees can use COVID-19 Sick Time if they cannot work or telework for the following COVID-19 reasons:

- Determination by a public official or public health authority having jurisdiction, a health care provider, or an employer that the employee's or employee's family member's presence on the job or in the community would jeopardize the health of others because of the individual's exposure to COVID-19 or because the individual is exhibiting symptoms that might jeopardize the health of others, regardless of whether the individual has been

diagnosed with COVID-19;

- Employee's need to, or care for a family who is:
  - Self-isolating because individual is diagnosed with COVID-19;
  - Self-isolating because individual is experiencing symptoms of COVID-19;
  - Seeking or obtaining, or needing (family member), medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19.

Employees must provide notice to the employer of the need for COVID-19 Sick Time as soon as practicable. Employees determine whether they will use COVID-19 Sick Time before using their statutory paid sick leave, and employers cannot require them to use company-provided paid leave before they use COVID-19 Sick Time (unless state or federal law requires otherwise). Employees may use COVID-19 Sick Time in the smallest increment their employer's payroll system uses to account for absences or use of other time. Employers cannot require employees to search for or find a replacement worker to cover their hours when using COVID-19 Sick Time.

When employment ends, employers need not cash-out unused COVID-19 Sick Time.

The law is not heavy on text, leaving it to the Mayor's Office of Equity to fill in gaps. In doing so, the ordinance requires that COVID-19 Sick Time standards align with those in the PSDA except where the ordinance establishes different standards. Hopefully quickly, given the ordinance took effect immediately, the agency will issue guidance about the ordinance and concerning which PSDA standards apply and to what extent.

For more information, *see* Pittsburgh Ordinance Requires Employers to Provide Paid Sick Leave for COVID-19-Related Reasons, Effective Immediately.

Puerto Rico Minimum Salary, Vacation and Sick Leave Act Amendments

On April 9, 2020, Puerto Rico immediately (and permanently) amended its existing Minimum Salary, Vacation and Sick Leave Act to require employers to provide five work days of special paid leave to non-exempt employees infected (or are suspected of being infected) by an illness or epidemic that triggers a state of emergency declared by either Puerto Rico's Governor or Health Secretary. Before employees can use this new leave, first they must exhaust all available accrued sick leave and any other available accrued leave to which they are entitled. Under the amended law, employers cannot consider an employee's leave use when making decisions concerning pay raises or promotions, and absences cannot justify disciplinary actions like suspension or termination. *See* Puerto Rico Enacts Law Creating Special Paid Leave for Non-Exempt Employees in the Private Sector.

Washington

Washington State Gubernatorial Proclamation re: Food Production Workers Paid Leave

On August 18, 2020, Governor Jay Inslee issued Proclamation 20-67: Food Production Workers Paid Leave. Beginning August 13, 2020, covered employers must provide paid leave to covered workers for various COVID-19-related reasons. At this time it is unclear how long the paid leave obligation will remain, though, based on current information, at least through November 13, 2020. Employers might be entitled to reimbursement for paid leave they provide to employees under Proclamation 20-67 via the Washington COVID-19 Food Production Worker Paid Leave Program.

The proclamation covers farm labor contractors if they pay wages to a covered worker. Additionally, it covers employers operating: 1) Orchards, fields, and dairies; 2) Fruit- and vegetable-packing warehouses, whether owned by the grower or producer or not; 3) Meat and seafood processors and packers,

including those falling under the 3116 and 3117 NAICS industry codes; and 4) All other industries expressly identified in Wash. Admin. Code 296-307-006. Based on the referenced industries the proclamation says it does not cover – Timber tracts; Christmas tree growing; Tree farms; Forest nurseries; Forestry services – it *appears* the proclamations is referencing the following 35 industries: Wheat; Corn; Cash grains not elsewhere classified, barley, peas, lentils, oats, etc.; Sugar cane and sugar beets; Irish potatoes—all potatoes except yams; Field crops—hay, hops, mint, etc.; Vegetables and melons, all inclusive; All berry crops; Grapes; Tree nuts; Deciduous tree fruits; Tree fruits or tree nuts not elsewhere classified; Ornamental floriculture and nursery products; Food crops grown under cover; General farms, primarily crops; Beef cattle feedlots; Beef cattle except feedlots—cattle ranches; Hogs; Sheep and goats; General livestock except dairy and poultry; Dairy farms; Broiler, fryer, and roaster chickens; Chicken eggs; Turkeys and turkey eggs; Poultry hatcheries; Poultry and eggs not elsewhere classified; Fur bearing animals and rabbits; Horses; Animal aquaculture; Animal specialties not elsewhere classified; General farms, primarily livestock and animal specialties; Soil preparation services; Crop planting, cultivating, and protecting; Crop harvesting, primarily by machine; Livestock services, except veterinary.

A hiring entity need not classify an individual as an employee to be a covered worker, which is a food production worker who commenced providing services to a covered employer, including, but not limited to:

- Domestic workers, *i.e.*, Washington State-based workers, including those domiciled in Washington;
- "Seasonal or migrant workers," as defined by the federal Migrant and Seasonal Agricultural Worker Protection Act;
- Temporary foreign workers who are lawfully present in the United States to perform agricultural labor or services of a temporary or seasonal nature pursuant to the Immigration and Nationality Act.

However, a covered worker does not include those who are subject to, and provided leave under, the federal FFCRA, or an employer's immediate family members.

Employers must provide covered workers the following amounts of paid leave. For those scheduled to work "full-time" or scheduled to work at least 40 hours in the preceding two weeks, up to 80 hours. For workers scheduled to work less than "full-time" and less than 40 hours in the preceding two weeks, an employer must provide an amount equal to the total number of hours the worker is normally scheduled during that two-week period; however, if the individual works a variable number of hours, 14 times the average number of hours the worker worked each day in the period preceding the date the worker took paid leave.

Covered workers can only use paid leave when they have a personal need to leave, i.e., the following qualifying events:

- Covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19
- Covered worker is advised by a health care official or provider to self-quarantine or self-isolate due to concerns related to or a positive diagnosis of COVID-19;
- Covered worker is prohibited from working due to health concerns related to the potential transmission of COVID-19; or
- Covered worker is experiencing COVID-19 symptoms and is seeking a medical diagnosis

Under the proclamation, employers must compensate workers for each hour of leave at a rate equal to $430 for 40 hours, up to a maximum of $860 for 80 hours (*i.e.*, $10.75 per hour).

The proclamation says employers must substitute paid leave with any other paid sick leave provided, including leave provided to meet the employer's obligations under Washington's statewide paid sick leave law, if that leave is immediately available under the same terms described in the proclamation.

Employers cannot take retaliatory or adverse employment actions against a covered worker or any other employee for exercising or seeking to exercise rights under the proclamation. Violators may be subject to criminal penalties, *i.e.*, any person willfully violating the proclamation is guilty of a gross misdemeanor.

Seattle, Washington Paid Sick and Safe Time for Gig Workers Ordinance

On June 12, 2020, Seattle enacted the Paid Sick and Safe Time (PSST) for Gig Workers Ordinance, which will take effect July 13, 2020, and currently is set to expire 3 years after the COVID-19 (or a related) emergency ends or December 31, 2023, whichever is later. The ordinance borrows heavily from Seattle's pre-existing Paid Sick and Safe Time Ordinance and, as a result, is far more detailed than other emergency leave laws. Accordingly, the following is a very condensed summary of what the ordinance requires.

On August 14, 2020, Seattle enacted clarifying amendments (effective September 13, 2020); specifically, that gig workers who are employees under Seattle's generally applicable paid sick and safe time ordinance are not covered by this ordinance.

Under the ordinance, food delivery network companies and transportation network companies with 250 or more gig workers worldwide must provide PSST to gig workers – food delivery network company workers or transportation network company drivers – who perform work wholly or partly in Seattle. Generally, workers accrue one PSST day for every 30 days worked and, notably, continue to accrue PSST for 180 days after the relevant emergency ends. For those who commenced work before July 1, 2020, the hiring entity must either: 1) Provide 5 PSST days immediately and then have workers accrue according to this schedule; or 2) Calculate accrual from October 1, 2019 or the when the worker commenced work, whichever is later. Hiring entities must make accrued PSST days available for use no more than 1 week after the accrual date. Note, however, that hiring entities may offset leave they must provide by the amount of paid leave a worker used for a PSST purpose between October 1, 2019 and July 12, 2020. Although the ordinance does not cap annual or overall accrual, hiring entities do not need to allow workers to carry over more than 9 PSST days to the following year (unless a hiring entity establishes a year in a written policy or procedure, the ordinance uses a calendar year).

Gig workers can use PSST if they performed work wholly or partly in Seattle within 90 before they request leave. They must use PSST in 24-hour increments. Gig workers can use PSST for themselves or to care for or assist family members (which vary depending on the type of absence) for "sick" time (Mental or physical illness, injury, or health condition of the gig worker or family member, medical diagnosis, care, or treatment thereof, and/or preventive medical care), "safe" time (various activities related to domestic violence, sexual assault, or stalking), and/or "other" time purposes (Hiring entity has suspended or otherwise discontinued operations by order of a public official, for any health-related reason to limit exposure to an infectious agent, biological toxin, or hazardous material; Hiring entity has reduced, suspended, or otherwise discontinued operations for any health- or safety-related reason; Family member's school or place of care has been closed). Note that, under the ordinance, a gig worker can use PSST until 180 days after the relevant emergency ends.

Hiring entities must establish an accessible system for gig workers to request and use PSST, which must be available via smartphone application or online web portal. When a gig worker uses more than 3 consecutive days of PSST, hiring entities may require reasonable verification that PSST was used for an authorized purpose. A gig worker must have a reasonable time period to provide verification, which must be defined by a written policy and procedure and cannot be less than 10 calendar days following the first day a gig worker uses PSST. Verification requirements cannot result in the worker incurring an unreasonable burden or expense, and cannot intrude upon the worker's privacy. During the emergency period, hiring entities cannot request verification

from a health care provider, but during other periods can. Additionally, hiring entities can seek reasonable verification concerning "safe" and "other" time absences.

Hiring entities must pay leave according to a gig worker's average daily compensation, which is the daily average of compensation owed for each day worked during the highest earning calendar month since October 1, 2019 or when the worker began work, whichever is later. Hiring entities must recalculate the daily average every calendar month. Hiring entities must provide PSST compensation no later than 14 calendar days or the next regularly scheduled date of compensation following the requested PSST day(s); however, if the entity requires verification, it must provide compensation no later than the gig worker's next regularly scheduled date of compensation after the worker provides verification.

The ordinance prohibits requiring workers search for or find a replacement worker to cover the days they use PSST, interfering with PSST rights, making immigration-status-related threats, adopting or enforcing a policy that counts PSST use as an event that may lead to or result in discipline or other adverse action, and retaliation for exercising protected PSST rights. A rebuttable presumption of retaliation exists if adverse action is taken within 90 days of the worker exercising protected rights.

The ordinance contains numerous notice- and/or policy-related requirements, including but not limited to the following. Hiring entities must provide workers a written notice of their rights and monthly notification concerning their PSST accrual, use, and balance. Each worker must receive written notice of the entity's policies and procedures for complying with the ordinance. By July 27, a hiring entity must file (use this form) with Seattle's Office of Labor Standards (OLS) information on their chosen accrual method. Additionally, for 3 years from the date of work, a hiring entity must retain various records demonstrating compliance, *e.g.*, date work began, days worked in Seattle, PSST accrued and used.

Workers can either file a complaint with Seattle OLS or a private lawsuit, and can recover unpaid compensation, liquidated damages, interest, and penalties, along with reasonable attorney fees and costs. The ordinance contains various penalties and fines, which increase depending on the type of violation and how many previous violations were committed.

For more information, *see* Seattle Passes Ordinance Providing COVID-19 Paid Sick and Safe Time for Gig Workers.