

# SENATE BILL 95 STATE COVID SICK LEAVE LEGISLATION FOR NURSING HOME WORKERS

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## BACKGROUND – NURSING HOME SICK LEAVE

SEIU Local 2015 fought for and recently won COVID-19 sick leave benefits from the state for nursing home workers. This important victory ensures sick pay for workers who need time off due to the pandemic.

Workers may claim this benefit if they are either (a) under quarantine; (b) caring for a child or someone else under quarantine; or (c) being vaccinated or experiencing vaccination side effects. These benefits are available between **January 1, 2021 and September 30, 2021**.

## HOW MUCH SICK TIME CAN I CLAIM?

The number of hours a worker can claim depends on the number of hours worked per week:

1. Full-time workers (40 hours or more per week) are allowed 80 hours paid sick leave.
2. Part-time workers are allowed the average hours worked in a 2-week pay period. For example, a worker who works 25 hours per week will be allowed 50 hours paid sick leave.
3. All workers may submit a claim for up to 2 hours per COVID-19 vaccination appointment.
4. All workers who miss work due to COVID-19 vaccination side effects may submit a claim for actual time missed.
5. For workers with variable hours, they get 14 times the average number of hours worked each day in the 6 months preceding the date of the leave. If they've worked for fewer than 6 months for the employer, but more than 14 days, calculation is made over entire period of work. If they've worked less than 14 days, the sick leave hours are the total number of hours that they have worked for that employer.

Workers may submit one claim forms for the entire benefit, or submit multiple claim forms which add up to the total eligible hours.

## HOW DO I QUALIFY FOR THE SICK LEAVE BENEFIT?

A worker must meet one of the following requirements to be eligible for the COVID-19 sick leave benefit. Workers experiencing substantially similar concerns may also claim the sick leave benefit:

1. **Quarantine (any of the following):**
  - a. Subject to quarantine or isolation order;
  - b. Advised by a healthcare provider to self-quarantine;
  - c. Experiencing symptoms and seeking medical diagnosis.
2. **Care duties (either of the following):**
  - a. Caring for an individual who is subject to quarantine or isolation;
  - b. Caring for a child whose school or childcare facility has been closed due to COVID-19 precautions, and no one else is available to care for your child;
3. **Vaccination (either of the following):**
  - a. Medical appointment to receive a COVID-19 vaccination (2 hrs.);
  - b. Experiencing COVID-19 vaccination related side effects.

## WHAT IF I ALREADY CLAIMED COVID-19 SICK TIME?

This is a new state benefit signed into law in March 2021. This benefit is different from the federal one-time sick leave benefit provided in 2020 under the Emergency Paid Sick Leave Act (EPSLA).

**Workers who claimed sick time under EPSLA may also claim sick time under this new California law.**

EPSLA applied to the period from April 2, 2020 to March 31, 2021. This new California state sick leave benefit applies to the period from January 1, 2021 to September 30, 2021.

## HOW DO I APPLY?

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The state does not provide a standard form to apply for supplemental sick leave so the process to apply will vary from employer-to-employer. However, the leave must be made available immediately upon the oral or written request from the worker to the employer.

### **DO I NEED TO SHOW MEDICAL DOCUMENTATION?**

The leave does not require medical certification unless the employer obtains information indicating the worker is not taking the leave for a valid purpose. For example, if the worker informs their employer that they are in quarantine but the employer later learns the worker went to a public gathering, the employer may ask for documentation.

### **ARE INDEPENDENT CONTRACTORS COVERED?**

Independent contractors are not covered unless the employer misclassifies them as an independent contractor.

### **WHAT IS THE WAGE RATE FOR THE SICK LEAVE?**

For nonexempt workers (not excluded from overtime), wage rates for the supplemental sick leave may vary by local jurisdiction but the paid rate must be the highest wage of the following:

1. State minimum wage
2. Local minimum wage
3. Regular rate of workweek pay for the leave they are using
4. A rate calculated by dividing total wages, not including overtime pay, by total hours worked in the full pay periods of the prior 90 days of employment

For exempt workers (excluded from overtime), their wage rates are calculated the same way the employer calculates wages for other forms of paid leave time.

### **CAN MY EMPLOYER MAKE ME USE OTHER TYPES OF LEAVE?**

Employers cannot require workers to use other paid or unpaid leave, paid time off, or vacation time before workers use supplemental sick leave unless the employer provides another separate supplemental benefit for COVID-19 leave as described above. Employers cannot require workers to apply for workers' compensation or state disability insurance instead of applying for supplemental sick leave.

### **IS THERE RETROACTIVE PAYMENT FOR THIS SICK LEAVE?**

If a worker took leave and was not compensated, they can request retroactive payment. After making this request, the employer has until the payday for the next full pay period to pay the retroactive payment. On that payday, the employer must also provide an accurate notice on how many supplemental sick leave hours remain available to the worker.

### **WHAT HAPPENS IF I TAKE THIS SICK LEAVE AS THE LAW EXPIRES?**

If the law expires while the worker is taking the supplemental sick leave, they can finish taking the amount they are entitled to receive.

### **WHAT HAPPENS IF THE EMPLOYER DENIES ME THIS SICK LEAVE?**

Any worker denied the supplemental sick leave can file a claim with the Labor Commissioner's Office or a Report of Labor Law Violations. Forms can be found at the Labor Commissioner's Office website:

([www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm](http://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm)).

### **WHAT IF THE EMPLOYER RETALIATES FOR USING THIS SICK LEAVE?**

Retaliation or discrimination against a worker requesting or using this paid sick time is against the law. A worker who experiences retaliation or discrimination can file a claim with the Labor

Commissioner's Office. You may contact your local office of the Labor Commissioner at [www.dir.ca.gov/dlse/DistrictOffices.htm](http://www.dir.ca.gov/dlse/DistrictOffices.htm) or call its headquarters at (510) 285-2118.

**WHERE CAN I GET MORE INFORMATION?**

For more information, call your facility representative, the Member Action Center (MAC) at (855) 810-2015, or visit the Department of Industrial Relations at [www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html](http://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html).