

Law and Policy Group | GRIST

# States, cities tackle COVID-19 paid leave

By Katharine Marshall and Catherine Stamm

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# 1

## Introduction

To alleviate some of the economic strain on employees unable to work due to COVID-19, some state and local authorities have begun to implement new paid leave requirements. Other jurisdictions are modifying existing leave laws or benefit programs to accommodate employees' needs during the pandemic. This GRIST provides brief summaries of new state and local paid leave benefits, as well as guidance addressing how current paid leave benefits apply during the COVID-19 pandemic.

### **Pandemic puts spotlight on paid leave**

State and local activity on paid leave issues will continue to evolve. The federal [Families First Coronavirus Response Act](#) (FFCRA)'s emergency paid sick and family leave requirements do not preempt any state or local paid leave mandates. Employers will need to watch for guidance from state and local authorities on coordinating the new federal paid leave rights with state and local mandates.

Many states are also taking steps to extend unemployment insurance benefits to workers who are on COVID-19-related unpaid leave, layoff, have reduced work hours or otherwise unable to work while caring for a child whose school or child care is closed due to the pandemic. Some states are also expanding job protections for employees on unpaid leave. A discussion of these state initiatives in response to the pandemic is beyond the scope of this GRIST.

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# Emergency paid leave benefits

## Arizona

The state's industrial commission updated its COVID-19 and earned paid sick time [FAQs](#) on April 7. Under Arizona's Earned Paid Sick Time law (Ariz. Rev. Stat. §§ [23-371](#) to 23-381), employers with 15 or more employees in the state must provide up to 40 hours of earned paid sick time per year, and smaller employers have to provide up to 24 hours. One of the allowed uses of earned, paid sick time is for a public health emergency, including one that closes the school or care facility for an employee's child.

The updated FAQs note that the state's governor declared a [public health emergency](#) related to COVID-19 on March 11. The governor has also issued an [executive order](#) to help health officials and administrators combat the spread of the virus and to reduce the financial burdens on Arizonans by lowering associated healthcare costs.

Due to the public health emergency and the governor's [closure](#) of all public schools (initially through March 27 but [extended](#) to the end of the school year), employees can use accrued, earned paid sick time to care for a child whose school has closed. Earned, paid sick time must also be available if:

- A public official has closed an employee's place of business due to the public health emergency.
- An employee or a family member contracts or needs to be tested for the virus.
- An employee or a family member is quarantined after exposure to COVID-19 — regardless of whether the employee or family member has actually contracted the virus — and a healthcare provider or public health official has determined that the employee's or family member's presence in the community may jeopardize the health of others.

The FAQs also contain information about emergency paid leave available through the FFCRA.

## California

Employees unable to work due to COVID-19 may be able to use employer-provided paid sick leave (PSL) or qualify for benefits under the state disability insurance (SDI) or paid family leave (PFL) programs. Both SDI and PFL benefits are approximately 60% to 70% of wages (depending on income) and range from \$50 to \$1,300 a week:

- **PSL.** [COVID-19 FAQs](#) from the Department of Industrial Relations confirm that employees can use available paid sick leave for their own or a family member's need to seek diagnosis, care or

treatment of an existing health condition; obtain preventive care; or deal with issues related to domestic violence, sexual assault or stalking. The [paid sick leave law](#) requires that employers allow employees to use up to 24 hours of paid sick leave (accrued at a rate of one hour of leave for every 30 hours worked) each year. According to the FAQs, preventive care may include self-quarantine after actual or potential exposure to COVID-19 or travel to a high-risk area. The paid sick leave law does not apply if an employee's child's school or child care has closed due to COVID-19. In that case, up to 40 hours of unpaid leave for child-related purposes may be available under [California law](#), and an employee can concurrently use accrued, paid sick leave as preventive care. Employers cannot require an employee to use paid sick leave, but can require the employee to use other paid leave — like vacation or paid time off (PTO) — before taking unpaid leave.

- **SDI.** [Executive Order N-25-20](#) authorizes the Employment Development Department (EDD) to waive the seven-day waiting period normally required before an employee can claim SDI benefits for disabilities related to COVID-19. SDI provides up to 52 weeks of partially paid leave for an eligible employee's own disability. The EDD has [confirmed](#) that employees unable to work because of exposure to — or a diagnosis of — COVID-19 (certified by a medical professional) can file a claim for disability benefits.
- **PFL.** The state's PFL program provides up to six weeks of paid leave to care for a seriously ill family member, among other reasons. Employees do not have to complete any waiting period for PFL, which increases to eight weeks for claims beginning on or after July 1. The EDD has [confirmed](#) that PFL benefits are available to eligible employees unable to work because they have to care for an ill or quarantined family member due to COVID-19 (if certified by a medical professional).

### Supplemental paid sick leave for food-sector workers

[Executive Order N-51-20](#), effective April 16, provides up to 80 hours (over two weeks) of supplemental paid sick leave (SPSL) to food-sector employees unable to work due to COVID-19. The order applies to employers with 500 or more food-sector workers nationwide. Food sector workers are persons who work in food and agriculture industries, including packaging, delivery and retail. An employee is eligible for paid leave if unable to work for any of these reasons:

- A COVID-19 quarantine or isolation order
- A healthcare provider's recommendation to self-quarantine or self-isolate;
- Potential transmission of the virus

Full-time employees and workers averaging 40 hours per week receive 80 hours of paid leave. Other employees are entitled to twice their normal weekly hours in a two-week period. Similar to the FFCRA's emergency sick leave, SPSL is paid at the employee's regular rate of pay, the state minimum wage or the local minimum wage, whichever is highest, and capped at \$511 per day and \$5,110 in total. The

leave must be available for the employee's immediate use on oral or written request. The order doesn't require any documentation.

SPSL is in addition to any paid sick leave the employee may already be entitled to under the state's [paid sick leave law](#). An employer cannot require an employee to use other leave, vacation or PTO before or instead of SPSL. However, employers that already provide a supplemental paid leave benefit for the same reasons that equals or exceeds what the executive order's requirements do not have to provide SPSL.

The [Labor Commissioner's Office](#) will provide a model notice that employers must post in the workplace and deliver electronically to employees who do not frequent the workplace. The order remains in place as long the statewide stay-at-home orders are active.

## Long Beach

On May 19, the Long Beach City Council [approved](#) an ordinance ([No. ORD-20-0017](#)) requiring all private employers with more than 500 employees nationwide to provide paid sick leave for workers impacted by COVID-19, including those with the need to care for a child because childcare is unavailable. The ordinance is intended to cover employers not subject to the FFCRA, with special rules for collective bargaining agreements. It is effective immediately and remains in effect until the city council decides — based on reports from the city manager every 90 days — that it is no longer needed.

The ordinance adds new chapter 8.110 to the municipal code for COVID-19 paid supplemental sick leave (PSSL). Under the ordinance, full-time employees are eligible for up to 80 hours of paid sick leave, and part-time employees are eligible for the number of hours they work, on average, over a two-week period. Employer cannot require eligible employees to exhaust other sick or accrued leave prior to using the PSSL. Unused PSSL does not have to be paid out at separation or when the ordinance sunsets.

**Permitted uses.** The paid supplemental sick leave applies to any employee performing work within the City of Long Beach and is available for the following reasons:

- The 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.
- The 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 healthcare provider.
- The employee experiences symptoms of COVID-19 and is seeking medical diagnosis.
- The 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.

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The leave is available for employees who cannot work (or telework), and employers can exclude emergency responders and healthcare providers.

**Rate of pay.** Leave is paid at the regular rate of pay up to \$511 per day, and no more than \$5,110 in the aggregate. If the leave relates to care for another, it can be paid at two-thirds the regular rate, up to \$200 per day and no more than \$2,000 in the aggregate.

**Exemptions and offsets.** Employers with a paid leave or paid time off policy that provide at least 160 hours of paid leave annually are exempt. Other covered employers can offset the ordinance requirement for every hour of COVID-19-related paid leave — not including accrued paid leave — already provided on or after March 4.

**Miscellaneous provisions.** Retaliation is prohibited, the right to request documentation is limited, and reasonable notice procedures can only be required for leave that is foreseeable. The ordinance is enforceable by private action where damages, including punitive, can be awarded.

### Los Angeles

After the Los Angeles City Council approved an [ordinance](#) requiring employers with employees working in the city to provide COVID-19 supplemental paid sick leave (SPSL) to those employed from Feb. 3 through March 4. The mayor issued an [emergency order](#) on April 7 superseding the ordinance. On April 11 the [Office of Wage Standards](#) issued [rules](#) implementing the mayor's order. The superseding order follows the general framework of the original ordinance but provides additional exemptions for certain employers.

The SPSL rights and remedies are in addition to and independent of any other rights, remedies and procedures available under any other law, except the federal FFCRA. The order is effective until two weeks after the local COVID-19 emergency period expires.

**Covered employers.** The emergency ordinance applies to employers with 500 or more employees in Los Angeles, or 2,000 or more employees nationwide. The order exempts:

- Employers that closed or stopped operations for at least 14 days after March 4 due to a city official's COVID-19 emergency order or provided at least 14 days' paid or unpaid leave (including furloughs)
- Employers with policy providing at least 160 hours of paid leave annually, excluding paid holidays or bereavement leave
- Employers of healthcare providers, first responders and global parcel delivery services
- Government agencies
- Certain new businesses

**Amount of SPSL.** The city's long-standing [sick leave rules](#) require an employer to provide employees at least 48 hours of paid sick leave or one hour for every 30 hours worked. The SPSL is separate and apart from any regular paid sick leave that the employer might have provided or continues to provide, such as the regular accrued paid sick leave required by law. With the SPSL, a full-time employee (working at least 40 hours per week or classified as full-time) can receive 80 hours of supplemental leave, while part-time workers receive SPSL equal to their average hours in a two-week period. SPSL is paid at an employee's average two-week pay between Feb. 3 and March 4. In all cases, leave pay is capped at \$511 per day or \$5,110 aggregate per employee. An employer can offset the SPSL requirement with paid leave (excluding accrued leave) provided for similar reasons on or after March 4.

**Permitted uses.** SPSL is available upon request from an employee who:

- Cannot work or telework and have been infected with COVID-19
- Is required or recommended to isolate or self-quarantine to prevent the spread of COVID-19
- Is at least 65 years old or suffer from a health condition like heart disease, asthma, lung disease, diabetes, kidney disease or a weakened immune system
- Needs to care for a family member who is not sick but in isolation or self-quarantine due to a public health official's or healthcare provider's requirement or recommendation
- Needs to provide care for a family member whose other care arrangements have temporarily ceased operations due to the public health emergency

An employer may not require a doctor's note or other documentation for the use of SPSL.

## Los Angeles County

On April 28, the [Los Angeles County Board of Supervisors enacted an interim urgency ordinance](#), immediately requiring employers with 500 or more employees nationwide to provide supplemental paid sick leave until Dec. 31 (or later if extended). The ordinance does not apply to federal, state or local government agencies, or employers subject to the federal FFCRA emergency paid leave provisions or the SPSL required by the California [Executive Order N-51-20](#).

Under the ordinance, a full-time employee (working at least 40 hours per week or classified as full-time) can receive 80 hours of SPSL, while part-time workers can receive SPSL equal to their two-week average between Jan. 1 and April 28. Leave pay is capped at \$511 per day or \$5,110 aggregate per employee. Covered employers can exclude emergency responder and healthcare provider employees.

Leave must be available upon the written request of employees who cannot work or telework because they:

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- Belong to a vulnerable population
- Or a family member is subject to a federal, state or local quarantine or isolation order, including a shelter-in-place order
- Or a family member is subject to a self-quarantine at the recommendation of a healthcare provider
- Have COVID-19 symptoms needing a medical diagnosis
- Have to care for a child whose school or care facility has closed due to the public health emergency
- Must isolate or self-quarantine because a public health official or healthcare provider requires it to prevent the spread of COVID-19
- Are subject to a federal, state or local quarantine or isolation order related to COVID-19 (e.g., is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system)
- Need to care for a family member who is subject to a federal, state or local quarantine or isolation order related to COVID-19 or they have been advised by a healthcare provider to self-quarantine related to COVID-19; or
- Need to 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

The SPSL is in addition to any paid sick leave available employees under the state's [paid sick leave law](#), and a covered employer cannot require use of any other employer-provided paid or unpaid leave, PTO or vacation time before, or in lieu of, SPSL. However, an employer's SPSL obligation can be offset by leave the employer voluntarily provided employees — above and beyond regular sick or personal leave — on or after March 31, for any of the reasons described in the ordinance and paid at an equal or greater amount than required by the ordinance.

Retaliation and discrimination against an employee for asserting rights provided by the ordinance is prohibited. The SPSL can be expressly waived in a collective bargaining agreement as long as the waiver is explicitly set forth in clear and unambiguous terms.

## Oakland

[Approved](#) May 12, Oakland's emergency supplemental paid sick leave (SPSL) ordinance ([No. 20-0345](#)) requires employers to provide 80 hours of coronavirus-related paid sick leave. The new requirement took effect immediately and will remain in effect until Dec. 31, unless extended by a city council resolution. The ordinance contains anti-retaliation and anti-discrimination provisions enforced by the Department of Workplace and Employment Standards. Once the city publishes a notice of employee

rights under the emergency ordinance, employers will have to provide the notice to Oakland employees within three days of publication.

**Amount of paid leave.** The SPSL is available to any employee who has provided at least two hours of service within the city of Oakland since Feb. 3 for an employer of any size. Full-time employees receive 80 hours of paid leave, and other employees receive paid leave equivalent to their highest two-week average hours worked between Feb. 3 and March 4. Leave is paid at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate.

**Permissible uses.** Employers must grant the emergency paid leave to any employee who cannot work or telework for one of these reasons:

- The employee needs to care for a family member who has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19.
- The employee is at least 65 years old and has a specified health condition or a heightened risk of serious illness or death if exposed to COVID-19.
- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- A healthcare provider has advised the employee to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing COVID-19 symptoms of and is seeking a medical diagnosis.
- The employee is caring for an individual subject to quarantine or isolation under a government order or a healthcare provider's advice.
- The employee is caring for a son or daughter whose school or place of care has closed or is unavailable due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by federal agencies.

Employees can take leave in one-hour increments and intermittently, and an employer's right to request documentation supporting the need for leave is limited.

**Coordination with other paid sick leave.** An employee can use the emergency paid sick leave before any other leave provided by an employer or required by Oakland's nonemergency paid sick leave ordinance ([Mun. Code § 5.92.030](#)). An employer cannot require an employee to use any other leave before taking the emergency paid sick leave. However, an employer can credit any emergency paid

sick leave hours taken under the federal FFCRA against hours available under the local SPSL ordinance, as long as the leave was paid at the employee's regular rate of pay.

**Exemptions.** Employers with fewer than 50 employees between Feb. 3 and March 4 (excluding certain franchisees) are exempt from the ordinance. Employers of healthcare providers or emergency responders can elect to exempt those employees from the emergency ordinance requirements, similar to what the FFCRA allows. Employers are exempt from the ordinance if:

- Between Feb. 3 and May 12, they provided immediate access to paid personal leave (including PTO, sick leave or vacation) on terms at least as generous as the emergency ordinance requires. This exemption applies only if the paid personal leave was in addition to any paid leave the employer had to provide under collective bargaining agreement, policy or contract.
- After Feb. 3, they allowed employees the ability to accrue at least 160 hours of paid personal leave, with at least 80 hours of leave available immediately after May 12 — even if the employee had fewer than 80 hours of accrued leave available before that date. For this exemption to apply, the paid personal leave must be available for the same reasons as allowed in the emergency ordinance.

**Payout of accrued paid sick leave required.** Oakland's nonemergency paid sick leave ordinance requires employers to provide one hour of paid sick leave for every 30 hours worked, up to a maximum of 72 hours per year. Until now, employers did not have to pay out accrued but unused nonemergency sick leave upon separation. However, the new ordinance appears to change this by requiring employers with at least 50 employees to compensate employees for all accrued but unused paid nonemergency sick leave immediately upon separation. No similar requirement entitles separating employees to payout of unused emergency paid sick leave.

## San Francisco

Guidance from San Francisco's Office of Labor Standards Enforcement (OLSE) temporarily expands leave rights and waives documentation requirements under the city's Paid Sick Leave Ordinance (PSLO). Employers also are encouraged to provide five additional days of paid sick leave — partly funded through the Office of Economic and Workforce Development — beyond current workplace policies.

### New paid sick leave rights

The PSLO requires employers to provide at least one hour of paid sick leave for every 30 hours worked to all employees working in the city. Employees may use accrued paid sick leave when they or a family member are ill, injured, receiving medical care (including preventive care) or treatment, seeking a diagnosis, or unable to work for other medical reasons. The new guidance requires covered employers to let employees use accrued sick leave to take time off work for any of these additional reasons:

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- The employee has to isolate or quarantine at the recommendation of a public health official or healthcare provider.
- The employee falls within the definition of a “vulnerable population” under March 6 [guidelines](#) or any subsequent updates issued by the San Francisco Department of Public Health. This category includes anyone aged 60 or older or with certain health conditions, such as diabetes; a weakened immune system; or heart, lung or kidney disease.
- The employee’s business or a work location temporarily ceases operations in response to a public health or other public official’s recommendation.
- The employee needs to care for a family member who is not sick but in isolation or quarantine at a public health official’s or a healthcare provider’s requirement or recommendation.
- The employee needs to care for a family member whose school, child or senior care provider, or work has temporarily ceased operations in response to a public health or other public official’s recommendation.

Employers may not require a doctor’s note or other documentation for paid sick leave. These changes are effective only for the duration of the city’s [novel coronavirus disease local health emergency](#).

### Additional paid sick leave incentive program

The Workers and Families First Program [announced](#) by the mayor offers incentives for businesses to provide an additional five days of sick leave pay to employees. All San Francisco businesses are eligible, with up to 20% of funds reserved for small businesses with 50 or fewer employees. As of April 5, the program had exhausted its funding, but businesses can sign up for a [waiting list](#).

The city will contribute up to one week (40 hours) at \$15.59 per hour (the San Francisco minimum wage), or \$623 a week, per employee toward paid sick leave. The employer must pay the difference between the minimum wage and an employee’s full hourly wage.

The program is available only if an employee has exhausted available sick leave and is ineligible for or has exhausted federal or state supplemental sick leave, and the employer agrees to extend sick leave beyond current benefits.

### New emergency paid sick leave

Effective April 17, an [emergency ordinance](#) requires private employers with 500 or more employees to provide paid sick leave during the COVID-19 local [public health emergency](#). The enacted Public Health Emergency Leave Ordinance (PHELO), amended from the original passed by the Board of Supervisors, provides emergency paid sick leave similar to the FFCRA’s provisions, but for employees of larger employers that are not covered by the federal law.

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Under the ordinance, a full-time employee (as of Feb. 25) receives 80 hours of emergency paid sick leave, and a part-timer (as of Feb. 25) receives paid leave equal to the average number of hours worked in a two-week period over the six months ending Feb. 25. The leave must be paid in the same manner as leave under the city's PSLO ([Admin Code § 12W.3\(h\)](#)). Leave may be used if the employee:

- Belongs to a vulnerable population
- Is or has a family member is subject to a federal, state, or local quarantine or isolation order, including a shelter-in-place order
- Is or has a family member is subject to a self-quarantine at the recommendation of a healthcare provider
- Has COVID-19 symptoms needing a medical diagnosis
- Has to care for a child whose school or care facility has closed due to the public health emergency

The leave is in addition to any PTO that the employer provided on or before April 17. An employer may not change any PTO policies on or after April 17, except to provide additional paid leave. However, an employer may reduce the PHELO-required leave by any paid leave hours (except previously accrued hours) taken on or after Feb. 25 for the same purposes. Unused leave does not have to be paid out at termination of employment, but retaliation for using the leave is prohibited.

Employers must provide the official [poster](#) (available on the [OLSE](#) website) in a manner calculated to reach all employees. [FAQs](#) about the PHELO are also available on the OLSE website.

## San Jose

On April 7, San Jose approved an [emergency ordinance](#) requiring certain private employers to provide emergency paid sick leave during the COVID-19 public health emergency. The COVID-19 Paid Sick Leave Ordinance requires employers not subject to the FFCRA's emergency paid sick leave provision to provide up to 80 hours of paid sick leave to full-time employees who have worked at least two hours in the city. Part-time employees must receive sick leave hours equal to the average number of hours worked over a two-week period. Only employees who leave their residence to perform essential work (as defined by the Santa Clara County Public Health Officer) are eligible under the ordinance.

An employee can use paid sick leave can be used when unable to work (or telework) for any of the following reasons:

- The employee is subject to a quarantine or isolation order by federal, state or local authority due to COVID-19 or is caring for someone who is quarantined or isolated due to COVID-19.

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- The employee is self-quarantined or is caring for someone self-quarantined due to COVID-19 at the advice of a healthcare provider
- The employee experiences symptoms of COVID-19 and is seeking medical diagnosis.
- The employee is caring for a minor child because a school or daycare is closed due to COVID-19.

The ordinance's pay requirements are similar the FFCRA's standards: Employees using sick leave for their own illness or quarantine must receive their regular rate of pay up to \$511 a day, not to exceed an aggregate of \$5,110. If sick time is used to care for another person, the employee must receive two-thirds of their regular rate of pay up to \$200 a day, not to exceed an aggregate of \$2,000.

Employers already providing some combination of paid personal leave at least equivalent to the ordinance's requirements do not need to provide more paid leave time. Employers that provide some but not an equivalent amount of paid leave must make up the difference to comply with the ordinance. The ordinance is effective through Dec. 31, 2020. The [Office of Equality Assurance](#) has issued [FAQs](#) and an [opinion letter](#) on the ordinance.

## Colorado

The Colorado Department of Labor and Employment has issued [Health Emergency Leave with Pay \(HELP\) rules](#) — with [March 26](#), [April 3](#) and [April 27](#) amendments — that require certain employers to provide paid sick leave for quarantine or isolation orders and COVID-19 testing. Effective dates and covered businesses include:

- Effective March 11: Leisure, hospitality, food service, child care, education, and home healthcare industries; nursing homes and community living facilities
- Effective March 26: Retail establishments that sell groceries
- Effective April 3: Employers in the food and beverage manufacturing industries
- Effective April 27: All retail establishments, real estate sales and leasing, offices and office work, elective medical, dental, and health services, and personal care services (including hair, beauty, spas, massage, tattoos, pet care, or substantially similar services)

These employers must provide up to two weeks (maximum 80 hours over 14 calendar days) of sick leave paid at 2/3 of the regular rate of pay to an employee who either:

- Has flulike symptoms or respiratory illness symptoms and is undergoing COVID-19 testing
- Has been instructed by a healthcare provider or authorized government official to quarantine or isolate due to the risk of having COVID-19

Paid sick leave ends if an employee receives a negative COVID-19 test result after being asymptomatic for 72 hours, but no earlier than seven calendar days (10 calendar days for healthcare workers).

The rules do not require additional paid leave if an employer's existing paid leave policy meets the HELP requirements. However, an employee who has exhausted paid leave under the employer's current policy and then qualifies for paid leave under the HELP rules, is entitled to the leave provided by the HELP rules. Where an employer is subject to federal or local law in addition to the HELP rules, the law providing the most generous employee benefit or job protection will apply.

The emergency rules first took effect March 11, with the latest amendments effective April 27. The amended rules will stay in effect for 30 days, unless Colorado's state of disaster emergency is ongoing. In that case, the rules will expire when the emergency ends or 120 days, whichever period is shorter.

## Michigan

Michigan's Executive Order No. 2020-36 requires individuals who have had close contact with someone who tests positive for COVID-19 or displays one or more of the principal symptoms of COVID-19 to remain home. Employees must be permitted to use any accrued time under the state's paid sick leave mandate. The order prohibits discharge, discipline or other retaliation against employees who are staying home due to illness, whose close contacts are sick, or who are at particular risk of infecting others with COVID-19. The executive order is in effect until the end of the declared states of emergency and disaster.

Michigan's Paid Medical Leave Act (PMLA), first effective March 29, 2019, requires covered employers to provide one hour of paid sick leave for every 35 hours worked, up to 40 hours per year. Under the executive order, employees ordered to stay home must be treated as if they are taking sick leave under the PMLA. If the employee required to stay home has no paid leave accruals, the leave may be unpaid.

Leave ends if an employee receives a negative COVID-19 test result, but otherwise must extend until seven days after the employee first noticed symptoms or tested positive for COVID-19 and three days after the employee's symptoms resolve. For employees with potential exposure to the virus, leave must last until either the symptomatic contact receives a negative COVID-19 test or 14 days have passed since the last close contact with a sick or symptomatic individual.

## New Jersey

Emergency legislation (2020 Ch. 9, AB 3848) prohibits employers in the state from terminating or refusing to reinstate an employee who requests or takes time off from work because of a licensed medical professional's written recommendation that the employee has or is likely to have an infectious disease. The law took effect March 20 and continues for the duration of the COVID-19 pandemic and state of emergency declared by Executive Order 103. Violations could lead to reinstatement orders, fines up to \$2,500 per instance and employee-initiated court action.

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Two new laws (2020 Chs. [17](#) and [23](#), SB 2304 and SB 2374), together amend New Jersey's [paid sick leave law](#) to allow use of accrued sick time during a governor's state of emergency declaration; extend job protections under the [Family Leave Act \(FLA\)](#); and expand the opportunity to use [temporary disability insurance \(TDI\)](#) and [family leave insurance \(FLI\)](#) for reasons related to communicable diseases. The amendments, effective March 25, are not specific to the COVID-19 pandemic and do not have an expiration date.

**Paid sick leave.** The paid sick leave law allows employees to use accrued paid sick leave for public health emergencies that close down their workplace or their child's school or daycare facility. Employees also can use earned sick leave for self-care or caring for a family member. With the amendments, employees can now also use accrued paid sick leave if their workplace or child's school or daycare has closed due to an emergency declaration or if they are subject to — or need to care for a family member who is subject to — a recommendation or an order to quarantine or isolate.

**FLA, TDI and FLI.** Under the amendments, FLA job protections are available when a communicable disease epidemic requires an employee to care for a child whose school or childcare has closed. FLA protections and FLI benefits are available to employees caring a family member subject to quarantine because of a communicable disease or suspected exposure to the disease. Employees may also be eligible for TDI, without a waiting period, if they have been advised to isolate or quarantine due to suspected exposure to a communicable disease or need in-home care or treatment because their presence in the community may jeopardize the health of others. Employers can require certifications, subject to certain restrictions.

More information can found in the [COVID-19 FAQs for employees](#) from New Jersey's Department of Labor and Workforce Development.

## New York

Effective immediately, New York emergency legislation (2020 Ch. 25, [SB 8091](#)) provides temporary paid sick leave for employees subject to a mandatory or precautionary quarantine or isolation order due to COVID-19. This includes COVID-19-related orders from the state, the department of health, a local board of health or any authorized government entity. The law also expands the state's existing PFL and disability benefit programs to certain employees. The emergency quarantine leave is in addition to any other sick leave provided by the employer, and New York City's and Westchester County's paid sick time mandates are not preempted by the temporary state law entitlements.

In addition, [amended](#) PFL regulations (NY Comp. Codes R. & Regs tit. 12 § [355.9](#)) clarify that employees may take family leave to care for a family member diagnosed with COVID-19. Coordination of New York's leave benefits with the federal FFCRA's leave entitlement is complicated.

The state's emergency quarantine leave law is unrelated to the recently enacted paid sick leave law (2020 Ch. 56, [AB 9506-A](#), Part J). The new paid sick leave measure, effective Sept. 30, requires employers

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to provide up to 56 hours of paid sick leave per year For more details, see [New York passes paid sick leave mandate](#) (April 9, 2020).

**Emergency sick leave.** The emergency paid sick leave is in addition to any employer-provided paid sick leave already available to employees. The state Department of Labor has authority to issue related

guidance and investigate complaints. Leave requirements vary by employer size on Jan. 1, 2020, as follows:

- Private employers with 100 or more employees and all public employers must provide at least 14 days of paid sick leave.
- Employers with 11 to 99 employees must provide at least five days of paid sick leave and then grant unpaid leave through the end of the quarantine/isolation period. Employers with up to 10 employees and a net income greater than \$1 million are subject to the same requirement.
- Small employers with up to 10 employees and net income not exceeding \$1 million must provide unpaid sick leave for the entire period of quarantine/isolation.

The legislation doesn't specify how to count the employee population or whether to include only New York workers. Unless otherwise advised, employers can reasonably conclude that they should count their entire workforce — including employees outside of New York — to determine how to comply. During the period of quarantine/isolation, employees of employers with fewer than 100 employees are eligible for PFL and disability benefits after exhausting any paid sick days provided under this emergency legislation.

**Expanded PFL and disability benefits.** For employers with fewer than 100 employees, the expanded PFL entitlement provides benefits to employees unable to work because they are subject to — or have to care for a minor child who is subject to — a mandatory or precautionary quarantine/isolation order. Disability benefits also are available without a waiting period for employees unable to work because of a quarantine or an isolation order. Benefits from both programs are available on the first day of unpaid leave and can be received concurrently. A maximum \$840.70 PFL benefit is available per week. The weekly benefit available under the emergency disability benefit expansion is the difference between the maximum weekly PFL benefit and the employee's total average weekly wage, up to a \$2,043.92 maximum per week. The expanded benefits under the PFL and disability programs are temporary.

**Teleworkers not eligible.** An employee who is asymptomatic or has not been diagnosed and is physically able to work while quarantined or isolated is not eligible for the COVID-related paid sick leave or expanded PFL and disability benefits.

**Personal travel may affect eligibility.** The COVID-19-related paid sick leave and expanded PFL and disability benefits may not be available to employees who are subject to quarantine or isolation orders because of personal travel to a level-two or level-three country as designated by the CDC. If employees had advance notice of the travel limitations, they can use employer-provided accrued paid leave or take unpaid sick leave during the travel-related quarantine/isolation order, but they don't qualify for benefits under this law.

**Job protection.** Employees returning to work after COVID-19-related leave must be restored to the position held before the leave, with the same pay and terms and conditions of employment. Discrimination and retaliation against employees who take leave is prohibited.

**Quarantine or isolation orders.** The COVID-related paid leave and benefits are available to an employee subject to a “mandatory or precautionary order of quarantine or isolation.” This includes any such order related to COVID-19 from the state, the department of health, a local board of health or any authorized government entity. The state has provided [guidance to local health departments](#) on when quarantine or isolation orders are appropriate.

**Coordination with federal COVID-19 emergency leave benefits.** The COVID-related paid sick leave, PFL and disability benefits are only available to the extent they exceed the paid leave required by the federal Families First Coronavirus Response Act. An employee eligible under both laws can claim any additional leave and benefits available under New York’s law that exceed what the federal law allows. Additional guidance from New York on coordinating these various mandates will be welcome. New York private employers with 500 or more employees are not subject to the federal law’s paid leave mandates but do have to comply with New York’s laws.

**More guidance to come.** New York regulators have issued [FAQs](#) on the emergency COVID-19 paid sick leave, PFL and disability benefits.

## Philadelphia

Philadelphia’s supplementary [regulations](#), effective during the COVID-19 public health emergency, allow for expanded use of accrued leave under the city’s [paid sick leave law](#). Employees may use accrued leave to undergo a COVID-19 evaluation and a two-week self-quarantine if they have symptoms of the virus, have had direct contact with an infected individual, or have recently traveled in a high-risk country. Self-quarantine may also apply to employees considered high risk by a medical professional.

Additional leave rights extend to caring for family members at home during COVID-19-related closures, such as school or daycare; state-ordered business closure; and applicable travel restrictions. The regulations also detail what documentation an employer may require, such as public statements from government officials or a signed employee statement of existing symptoms or need to stay home. Employers can’t require a note from a health professional, consistent with [guidance](#) from the Centers for Disease Control and Prevention.

## Rhode Island

The Department of Labor and Training has issued a [workplace fact sheet](#) on COVID-19, reminding workers that they may be eligible for temporary disability or family caregiver insurance benefits if they or a family member have been affected by COVID-19. The state is waiving the seven-day minimum claim period for COVID-19 claims and the need for medical certification if a worker is under quarantine.

## Seattle

[FAQs](#) from Seattle’s Office of Labor Standards (OLS) clarify how the city’s [Paid Sick and Safe Time Ordinance](#) (PSST) applies during the COVID-19 public emergency and detail the city’s recent [amendments](#). The ordinance requires employers with one or more employees working in the city to provide paid leave so employees can care for themselves or a family member who has a physical or mental health condition, a medical appointment or a critical safety issue. Under the original ordinance, employees also could use accrued paid leave when a public official closes their place of business or their child’s school or place of care for health reasons.

**Amendments.** March 16 amendments require employers to allow the use of accrued paid sick leave if a family member’s place of care or school is closed and remove the requirement that the closure occur for a health-related reason subject to a public official’s order. In addition, employers with 250 or more full-time equivalent employees must allow the use of PSST when their place of business is closed for any health or safety reason. The guidance also covers mandatory use of PSST, including for employees returning from a different country; exhausted accruals; paid leave donation; and other issues.

**Emergency rule.** On April 8, the [OLS](#) adopted an [emergency rule](#) that bars employers during the civil emergency from requiring employees on PSST leave to provide documentation from a healthcare provider. The agency says a requirement is “an unreasonable burden for workers and our healthcare system.” The rule is effective until June 7.

## Washington, DC

A Washington, DC [emergency act](#) expands the city’s existing [Accrued Sick and Safe Leave Act](#) to provide “declared emergency leave” during the COVID-19 public health emergency. Under the emergency leave amendment, an employer with between 50 and 499 employees (other than a healthcare provider) must provide paid leave for the same purposes provided in the federal FFCRA’s emergency leave provisions:

- A federal, state, or local quarantine or an isolation order
- A self-quarantine recommendation from a healthcare provider
- COVID-19 symptoms needing a medical diagnosis
- The need to care for an individual in quarantine or isolation or experiencing COVID-19 symptoms
- The need to care for a child whose school or care facility has closed for COVID-19 reasons

Paid leave extends to employees who have worked for at least 15 days before the leave request. Full-time employees working in the district receive up to 80 hours of paid leave, and part-time employees get paid leave equal to the usual number of hours worked in a two-week period. The leave must be

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paid at 100% of the employee's regular rate (as opposed to the two-thirds in some cases under the FFCRA), but no lower than minimum wage, and with no cap.

Employers may require employees to exhaust any available leave under federal or city law or the employer's policies before using the additional leave. Once this paid leave has been exhausted, employers must inform employees who need additional time off about any paid or unpaid leave to which the employee may be entitled under federal or city law or the employer's own policies.

### 3

# COVID-19 guidance for existing paid leave benefits

## Connecticut

The Connecticut Department of Labor has published [COVID-19 FAQs](#) for workers and employers that address a number of topics, including the use of accrued paid sick leave during the pandemic. The state's paid sick leave law requires employers with 50 or more employees to provide up to 40 hours of paid leave per year. Employees can use this paid leave for their own or a child's or spouse's illness or medical care. According to the FAQs, which the department plans to update regularly, paid sick leave will cover certain absences related to COVID-19.

## Massachusetts

[FAQs](#) from the Massachusetts attorney general clarify employee rights and employer obligations under the state's existing paid sick leave law in the context of COVID-19. Massachusetts employers must provide up to 40 hours of accrued paid sick time each year for employees to use — to take care of themselves or family members or to comply with a required or recommended quarantine. Current law does not cover instances of school, child care, or work closures due to a public health emergency. Nevertheless, employers are encouraged to allow liberal use of earned sick time — and vacation or PTO — during the pandemic in order to support full compliance with the recommendations of health professionals.

## Minnesota

Employers with employees in [Duluth](#), [Minneapolis](#) or [St. Paul](#) must provide paid sick leave that can be accrued over time or front-loaded at the start of the year. Specifics differ for each ordinance. The cities of Duluth and Minneapolis have provided new FAQs for employers to clarify how these ordinances apply to COVID-19 related absences.

**Duluth FAQs.** Employees in Duluth can use accrued paid sick time to seek coronavirus screening or treatment, care for symptoms or infection, and undergo testing or quarantine after close personal contact with an infected or symptomatic person. Employees can use sick leave for self-care or to care for a covered family member. The ordinance doesn't cover use of paid sick time when a family member's school or child care facility has closed or when the employee's workplace has closed by

order of a public official due to the virus. However, the FAQ notes that an employer can allow the use of paid sick leave for reasons not covered by the ordinance.

**Minneapolis FAQs.** Employees in Minneapolis can take accrued sick leave for absences related to coronavirus symptoms, testing or infection. Employees can use paid sick time for self-care or to care for a family member. They also can use paid sick time when a family member's school or child care facility has closed or when the employee's workplace has closed by order of a public official due to the virus. Preemptive closures or self-quarantine are not covered uses under the ordinance.

No state law requires employers to provide paid sick leave. However, a Minnesota Department of Labor [fact sheet](#) notes that employers provide paid sick time for an employee's own illness, they generally must allow an employee to use sick leave to care for an ill minor child, an adult child, a spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or step-parent.

## **Nevada**

Nevada's Office of the Labor Commissioner has issued COVID-19 [guidance](#) on the state's new paid leave law ([2019 Ch. 592](#)). Employers cannot require employees to use accrued paid sick leave if unable to work due to a mandatory government quarantine, but employees can choose to use paid or other applicable leave. The Office of the Labor Commissioner's [website](#) that features links to COVID-19 resources for employers, including a summary of the federal COVID-19 paid leave requirements.

## **Oregon**

Oregon's sick leave law requires employers to provide employees with at least one hour of paid sick time for every 30 hours worked. The state's Wage and Hour Division has published [FAQs](#) for employers and employees about sick time and the coronavirus. Employees can use accrued sick time when a public health emergency closes their place of work, or they have to care for child whose school or child care center has closed due to the public health emergency. Employees also can use paid sick leave for their own illness or to care for an ill family member (including parents, grandparents and grandchildren).

## **Vermont**

Vermont's paid sick time law requires employers to provide up to 40 hours of accrued paid leave every year. [COVID-19 FAQs](#) from the state's Department of Labor remind employers and employees that accrued paid sick leave can be used by employees who have COVID-19 or need to care for a sick family member. Under the law, employees can also use accrued sick time when a family member's school or business is closed for public health or safety reasons.

## Washington

The Department of Labor & Industries has posted answers to [common questions on paid sick leave and COVID-19](#). Employees can use paid sick leave if a public official closes their place of business or their child's school or place of care due to COVID-19. Employees can also use PTO for these purposes if paid sick leave is part of the PTO program. However, employers cannot require employees to use to their paid sick leave to cover virus-related absences. The employee can choose when to use accrued paid sick leave.

## 4

# Related resources

### Non-Mercer resources

- [Pub. L. No. 116-127](#), the Families First Coronavirus Response Act (Congress, March 14, 2020)
- [Centers for Disease Control and Prevention resource page](#)
- Arizona: [Frequency Asked Questions about COVID-19 and Earned Paid Sick Time](#) (Industrial Commission, April 7, 2020)
- California: [Executive Order N-51-20](#) (April 16, 2020)
- California: [FAQs on Laws Enforced by the California Labor Commissioner's Office](#) (April 7, 2020)
- California: [Healthy Workplaces, Healthy Families Act of 2014](#)
- California: [Executive Order N-25-20](#) (Governor's Office, March 12, 2020)
- California: [COVID-19 website for employers and employees](#) (Employment Development Department)
- Long Beach: [COVID-19 Paid Supplemental Sick Leave \(No. ORD-20-0017\)](#) (City Council, May 19, 2020)
- Los Angeles County: [COVID-19 supplemental paid sick leave](#) (Board of Supervisors, April 28, 2020)
- Los Angeles: [Emergency order](#) (Mayor's Office, April 7, 2020)
- Los Angeles: [Rules and regulations implementing the public order on SPSL due to COVID-19](#) (Office of Wage Standards, April 11, 2020)
- Los Angeles: [COVID-19 supplemental paid sick leave \(File 20-0147-S39\)](#) (City Council, March 25, 2020)
- Oakland: [Ordinance No. 20-0345](#) (City Council, May 12, 2020)
- San Francisco: [Ordinance 200355](#) (April 17, 2020)

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- San Francisco: [PHELO FAQs](#) (April 17, 2020)
- San Francisco: [Ordinance 200313](#) (Board of Supervisors, April 7, 2020)
- San Francisco: [Paid sick leave & the coronavirus](#) (OLSE, March 24, 2020)
- San Francisco: [Paid sick leave ordinance webpage](#)
- San Francisco: [Workers and Families First Program](#) (Mayor's Office, March 16, 2020)
- San Francisco: [Guide to Reimbursement for Workers and Families First Program](#) (City and county government, April 8, 2020)
- San Francisco: [Workers and Families First Paid Sick Leave Program FAQs](#) (Office of Economic & Workforce Development, March 30, 2020)
- San Jose: [COVID-19 Paid Sick Leave Ordinance FAQs](#) (Office of Equality Assurance)
- San Jose: [Ordinance 30390](#) (City Clerk's Office, April 7, 2020)
- Colorado: [Health Emergency Leave with Pay \(HELP\) rules](#) (DLE, March 11, 2020, as amended on March 16, April 3, and April 27 2020)
- Colorado: [HELP rules webpage](#)
- Connecticut: [COVID-19 FAQs for workers and employers](#) (Labor Department, March 20, 2020)
- Massachusetts: [Frequently asked questions about COVID-19](#) (Office of the Attorney General)
- Michigan: [Executive Order No. 2020-36](#) (Office of the Governor, April 3, 2020)
- Michigan: [Paid Medical Leave Act FAQs](#) (Bureau of Employment Relations, Feb. 2019)
- Minnesota: [Worker protections related to COVID-19](#) (Department of Labor and Industry, March 19, 2020)
- Duluth, MN: [Earned Sick and safe time and COVID-19 FAQs](#) (City of Duluth, MN)
- Minneapolis, MN: [COVID-19 and the sick and safe time ordinance FAQs](#) (Department of Civil Rights, March 18, 2020)
- Nevada: [COVID-19 and paid leave guidance](#) (Office of the Labor Commissioner, March 11, 2020)
- Nevada: [Office of Labor Commissioner website](#)

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- New Jersey: [COVID-19 FAQs for employees](#) (Department of Labor & Workforce Development)
- New Jersey: [2020 Ch. 23](#) (SB 2373) (Legislature, April 14, 2020)
- New Jersey: [2020 Ch. 17](#) (SB 2304) (Legislature, March 25, 2020)
- New Jersey: [2020 Ch. 9](#) (AB 3848) (Legislature, March 20, 2020)
- New Jersey: [Executive Order 103](#) (Governor's Office, March 9, 2020)
- New York: [2020 Ch. 25](#) (SB 8091), Emergency COVID-19 paid sick leave law (Senate, March 18, 2020)
- New York: [New paid leave for COVID-19](#) (Workers; Compensation Board)
- New York: [2020 Ch. 56](#) (AB 9506-A, Part J), Budget bill with proposed paid sick leave mandate (Assembly, Feb. 22, 2020)
- Oregon: [COVID-19 FAQs for employers and employees](#) (Wage and Hour Division)
- Philadelphia: [Supplemental Emergency Regulation regarding COVID-19 and Ch. 9-411 of the Philadelphia Code](#) (Office of Labor, March 16, 2020)
- Philadelphia: [Paid sick leave resources](#) (City government, Feb. 13, 2020)
- Rhode Island: [Workplace fact sheet](#) (Department of Labor and Training, March 10, 2020)
- Vermont: [COVID-19 FAQs for employer and employees](#) (Department of Labor, March 19, 2020)
- Vermont: [Earned sick time law FAQs](#) (Department of Labor, Oct. 22, 2019)
- Washington: [Paid sick leave and COVID-19 webpage](#) (Department of Labor & Industries)
- Seattle: [Emergency Seattle Human Rights Rule 70-080](#) (Office of Labor Standards, April 8, 2020)
- Seattle: [Paid sick and safe time webpage](#) (Office of Labor Standards)
- Seattle: [Paid sick and safe time amendments](#) (City Council, March 16, 2020)
- Washington, DC: [Act 23-286](#), COVID-19 Response Supplemental Emergency Amendment Act of 2020 (City Council, April 10, 2020)
- Washington, DC: [§ 32-531.01 et seq.](#) (City Council, April 10, 2020)

## **Mercer Law & Policy resources**

- [Roundup: Coronavirus \(COVID-19\) updated resources for employers](#) (regularly updated)
- [Keeping track of COVID-19 laws affecting employee benefits, jobs](#) (May 4, 2020)
- [Virus aid legislation includes cost-sharing curbs, new leave rights](#) (March 18, 2020)
- [New California laws affect health insurance, leave, other HR policies](#) (Feb. 19, 2020)
- [2020 state paid family and medical leave contributions and benefits](#) (Feb. 14, 2020)
- [ME and NV paid accrued leave mandate expands state paid sick leave totals](#) (July 1, 2019)

## **Other Mercer resources**

- [Stay informed on the coronavirus](#) (regularly updated)
- [Designing a COVID-19 emergency leave policy: Four key considerations](#) (March 17, 2020)
- [Update: Rapid action plan on paid leave during the pandemic](#) (March 12, 2020)
- [COVID-19 and paid leave: Three scenarios to plan for](#) (March 5, 2020)

**Mercer (US) Inc.**  
1166 Avenue of the Americas  
New York, NY 10036  
[www.mercer.com](http://www.mercer.com)

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