

Employment Practice Group at Lewitt Hackman

	City of L.A. SPSL	County of L.A.	SPSL to CA Food Sector Workers	City of L.A. Paid Sick Leave	CA Paid Sick Leave	Emergency Family and Medical Leave Expansion Act (EFMLEA)	Emergency Paid Sick Leave Act (EPSLA)
Overview	Signed into law by Mayor Garcetti on April 7, 2020, L.A.'s emergency Supplemental Paid Sick Leave "SPSL" Order took immediate effect and will continue until two weeks "after the expiration of the COVID-19 local emergency."	On April 28, 2020, the Los Angeles County Board of Supervisors unanimously approved the SPSL urgency ordinance. The ordinance is retroactive from March 31, 2020 and will continue until December 31, 2020 (unless extended by the Board of Supervisors).	Signed by Governor Newsom on April 16, 2020, Executive Order N-51-20 took immediate effect and will continue until the end of the COVID-19 state emergency. Workers on leave when the state emergency expires will be permitted to use any remaining SPSL to which they would have otherwise been entitled.	The City of L.A. provides 48 hours paid sick leave under the City's Minimum Wage Ordinance. In a March 18, 2020, guidance , the City of Los Angeles clarified that employees are entitled to take L.A. sick leave for reasons related to COVID-19.	California's Healthy Workplaces Healthy Families Act of 2014 requires employers to provide 24 hours or three (3) days of paid sick leave to employees working in California.	On March 18, 2020, President Trump signed the Families First Coronavirus Response Act, a bipartisan bill which responds to the COVID-19 outbreak by providing, among other benefits, paid sick leave and additional protections to employees affected by COVID-19. FFCRA took effect on April 1, 2020 and will continue through December 31, 2020.	
Covered Employers	Employers with: (i) 500 or more employees within the City of Los Angeles; or (ii) 2,000 or more employees in the U.S.	Employers with 500 or more employees nationally.	A hiring entity with 500 or more employees within the nation.	All employers, regardless of size.		Employers with 500 or fewer employees. Note, there is a limited exemption for companies with fewer than 50 employees from providing paid leave to an employee to care for a child whose school or place of care is closed or whose child care provider is unavailable when the imposition of leave would jeopardize the viability of the business, among other requirements.	
Eligible Employees	An employee is entitled to SPSL if the individual performs any work (or telework) within the geographic boundaries of the City of L.A. and has been employed with the same employer from February 3, 2020 through March 4, 2020.	An employee is entitled to SPSL if the individual performs any work within the unincorporated areas of L.A. County and has been employed by the employer since April 28, 2020.	An eligible individual must be an "essential worker" who leaves their residence to perform work for or through the hiring entity. Additionally, the individual must work in one of the following specified industries or occupations: <ul style="list-style-type: none"> ▪ Canning, freezing, and preserving industry; ▪ Industries handling products after harvest; ▪ Industries preparing agricultural products for market, on the farm; ▪ Agricultural occupation (e.g., harvesting an agricultural commodity, raising livestock, etc.); ▪ A hiring entity that operates a food facility; or ▪ Delivering food from a food facility. 	Any individual who performs at least two hours of work in a particular week within the geographic boundaries of the City of L.A. and works in the City for the same employer for 30 days or more within a year from start of employment.	Employees who have worked for the employer in California for 30 or more days within a year from the start of employment.	Employees eligible for EFMLEA must have been on the employer's payroll for at least 30 calendar days immediately prior to the start of the leave.	Employees are eligible for EPSLA regardless of how long they have been employed by a covered employer.

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Permissible Uses	<p>SPSL can be used if the employee takes time off work (or telework) because:</p> <ol style="list-style-type: none"> The employee is infected with COVID-19 or because a public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19; The employee is at least 65 years old or has a specified health condition (e.g., heart disease, asthma, or diabetes); The employee is caring for a family member who is not sick, but is isolating or under self-quarantine as required or recommended by a public health official or healthcare provider; or The employee is caring for a family member whose senior care provider or child (under the age of 18) whose school or childcare provider temporarily ceases operations in response to a public health or other public official's recommendation. Note, this provision only applies to an employee who is unable to secure a reasonable alternative caregiver. 	<p>An employer must provide supplemental SPSL upon an employee's written request if the employee is unable to work, or telework, because:</p> <ol style="list-style-type: none"> A public health official or healthcare provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19; The employee is 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 specified health condition); The employee is caring for a family member 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 related to COVID-19; or The employee is caring for a family member whose senior care provider or whose child's school or childcare provider ceases operations in response to a public health or other public official's recommendation. 	<p>A worker can take SPSL if the individual is unable to work because:</p> <ol style="list-style-type: none"> The worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19; The worker is advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or The hiring entity prohibits the worker from working due to health concerns related to the potential transmission of COVID-19. 	<p>An employee may use paid sick leave for the following reasons:</p> <ol style="list-style-type: none"> To take time off because they are 65 or older or have a serious chronic medical condition as described by the CDC; Because public health officials or healthcare providers require or recommend an employee isolate or quarantine to prevent the spread of disease; To take time off work or loses regular or scheduled work hours because the employee's business or work location temporarily ceases operations in response to a public health or other public official's recommendation or mandate; To take time off work because the employee needs to provide care for a family member, by blood or affinity, who is not sick but who public health officials or healthcare providers have required or recommended isolate or quarantine; The employee needs to provide care for a family member whose school, child care provider, senior care provider, or work temporarily ceases operation in response to a public health or other public official's recommendation or mandate that is made to 	<p>An employee may use paid sick leave for the diagnosis, care, or treatment of an existing health condition or preventive care, for themselves or a family member.</p> <p>Paid sick leave may also be used for an employee who is a victim of domestic violence, sexual assault, or stalking.</p>	<p>Eligible employees are entitled to 12 weeks of protected leave if unable to work (or telework) due to a need to care for the employee's child (under 18 years of age; or older and is incapable of self-care) in the event of school or childcare closure due to a COVID-19 emergency, as declared by federal, state or local authority.</p>	<p>Employers must provide employees EPSLA if an employee is unable to work (or telework) due to a need for leave because:</p> <ol style="list-style-type: none"> The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; The employee is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine; The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precaution; or The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

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				<p>prevent the spread of disease;</p> <p>6. For the diagnosis, care, or treatment of an existing health condition or preventive care, for themselves or a family member; or</p> <p>7. For an employee, or a covered family member, who is a victim of domestic violence, sexual assault, or stalking.</p>			
Amount of SPSL	<p>Full-time employees (those who work at least 40 hours per week) receive 80 hours of SPSL. SPSL is calculated at the employee's average two-week pay from February 3, 2020 through March 4, 2020.</p> <p>Employees who work fewer than 40 hours per week receive leave in an amount no greater than the employee's average two-week pay over the period of February 3, 2020 through March 4, 2020.</p> <p>SPSL may be taken intermittently.</p>	<p>Employees classified as full-time, or who otherwise work 40+ hours per week, will receive 80 hours of SPSL. A full-time employee's leave is calculated based on the employee's highest average two-week pay period from January 1, 2020 through April 28, 2020.</p> <p>Employees who work fewer than 40 hours per week and are not classified as full-time will receive leave in an amount no greater than the employee's average two-week pay over the period of January 1, 2020 through April 28, 2020.</p>	<p>Full-time workers (those considered full-time by the hiring entity or who worked/were scheduled to work an average of 40+ hours per week during the two weeks preceding the leave date) receive 80 hours of SPSL.</p> <p>Employees who are not full-time are entitled to an amount equal to the number of hours the individual is typically scheduled to work over two weeks.</p> <p>Workers with a variable schedule will receive 14 times the average number of hours they worked each day in the six months preceding the worker's leave date. For those who have worked less than six months, leave must be calculated over the entire period the individual has worked for the entity.</p> <p>Leave is compensated at a rate equal to the highest of:</p> <ul style="list-style-type: none"> ▪ A worker's regular rate of pay for the last pay period; ▪ CA's minimum wage; or 	<p>At least 48 hours. Employees may either accrue sick leave (one hour for every 30 hours worked) or receive the full amount at the beginning of each 12-month period.</p> <p>Accrual and carry over may be capped at 72 hours.</p> <p>Regardless of the amount of paid sick time the employee has accrued, employers may limit the employee's use to 48 hours.</p> <p>Employers may also elect to use a lump-sum method of no less than 48 hours. Unused sick leave will carry over to the following year, subject to a cap of 72 hours. As with the accrual method, employers may limit the amount of leave to 48 hours.</p>	<p>24 hours or three (3) days (the greater). Employees may either accrue sick leave (one hour for every 30 hours worked) or receive the full-amount at the beginning of each 12-month period.</p> <p>Carry-over of unused sick leave is required for employees who accrue sick leave, subject to a cap of 48 hours per year.</p>	<p>Up to 12 weeks of partially paid leave:</p> <p>The first 10 days of EFMLEA leave may be unpaid, but an employee may elect to use any accrued vacation, sick, or other paid time off during the unpaid portion of the leave.</p> <p>After the first 10 days (and up to 12 weeks), leave must be paid at not less than 2/3 of the employee's regular rate of pay.</p>	<p>EPSLA for full-time employees is equivalent to 80 hours.</p> <p>EPSLA for part-time employees is generally equivalent to the number of hours the employee works on average over a two-week period.</p> <p>EPSL taken for reasons 1 – 3 above should generally be calculated based on the employee's regular rate of pay (no less than the applicable minimum wage).</p> <p>EPSLA taken for reasons 4 – 6 should be calculated based on 2/3 of the employee's regular rate of pay or applicable minimum wage.</p>

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			<ul style="list-style-type: none"> The worker's local minimum wage. 				
Limitation Payment	All three forms of SPSL shall not exceed \$511 per day and \$5,110 in the aggregate.					For the 10 weeks following the initial two-week period of unpaid leave: <ul style="list-style-type: none"> Up to \$200 per day and \$10,000 in the aggregate per employee. 	EPSL shall not exceed (per employee): <ul style="list-style-type: none"> \$511 per day and \$5,110 in the aggregate for reasons 1-3 above \$200 per day and \$2,000 in the aggregate for reasons 4 – 6 above.
Exemptions	Employers exempt from the Order include the following: <ul style="list-style-type: none"> Emergency and health services personnel; Critical parcel delivery services; Employers that provide a minimum of 160 hours of paid leave annually (excluding paid holidays and paid bereavement leave) (if such "generous leave" has already been provided to an eligible employee; New businesses that opened in, or relocated to, the City between September 4, 2019 and March 4, 2020; Government agencies (however, government contractors are not exempt); and Any business or organization that was closed or has not operated for 14 or more days after March 4, 2020 due to COVID-19 or has provided at least 14 days of leave. 	Emergency responders, health care providers, and food sector workers (as defined in Governor Newsom's Executive Order N-51-20) are exempt from the ordinance. The ordinance also does not apply to federal, state, or local government agencies. Any waiver of the ordinance's provisions in a collective bargaining agreement must be express, clear, and unambiguous terms.	A hiring entity is exempt if it already provides a supplemental COVID-19 related benefit that would otherwise compensate the worker in an amount equal to or greater than an amount specified by the Order.			For employers with fewer than 50 employees, only if (in addition to other requirements) school-closure leave would result in expenses and financial obligations exceeding available business revenues and cause the business to cease operating at minimal capacity. Employers who employ a "health care provider" or an "emergency responder" are not required to provide FFCRA benefits "on a case-by-case basis"	
Record-keeping	Employers should retain documentation demonstrating compliance with the Order,			Employers are required to retain payroll records	Employers must retain records for at least three years that document the:	Four-year recordkeeping requirement regardless of whether leave was granted or denied.	

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	<p>including the name of the employee requesting the leave, date(s) for which leave is requested, the reason or category for the leave, whether the request was approved, and if not, the reason for denial.</p> <p>Additionally, employers must retain any documentation that substantiates a claimed exemption from the Order.</p>			<p>pertaining to employees for a period of four years.</p>	<ul style="list-style-type: none"> ▪ Number of hours that the employee worked; ▪ Paid sick days accrued by an employee; and ▪ Paid sick days used by an employee 	<p>Employees who wish to take EPSLA or EFMLEA leave must provide the following information (either orally or in writing):</p> <ol style="list-style-type: none"> 1. Employee's name; 2. Date(s) for which leave is requested; 3. Qualifying reason for the leave; and 4. Oral or written statement that the employee is unable to work because of the qualified reason for leave. <p>Note, there is additional information required for sick and childcare leave.</p>	
Restrictions & Other Requirements	<p>SPSL cannot be conditioned on an employee providing a doctor's note or other documentation and employers cannot inquire into or require employees to describe or explain the illness or condition necessitating leave (however, an employer may require an employee to provide a reason for taking leave for recordkeeping purposes).</p>	<p>Unlike the City of L.A.'s SPSL Order, an employer <i>may</i> condition leave on an employee providing a doctor's note or other documentation.</p> <p>SPSL must be provided in addition to any existing CA PSL the employee would otherwise receive. Additionally, employers may not require employees to use other forms of time off before, or in lieu of, using paid sick leave under the ordinance.</p>	<p>Hiring entities must post a model notice in a conspicuous place or send the model notice to workers via email or other electronic means.</p> <p>SPSL must be provided in addition to any existing CA paid sick leave the worker would otherwise receive.</p> <p>Hiring entities may not require workers to use any other employer-provided leave before using SPSL.</p>	<p>Employers must provide written notice about amount of paid sick leave available for use (e.g., on employee pay stubs or in a separate writing provided with the pay stub).</p> <p>Employers must also post an L.A. Paid Sick Leave notice and provide written notice of paid sick leave information to all new hires (Notice to Employees, Labor Code section 2810.5).</p>	<p>Employers must provide written notice about amount of paid sick leave available for use (e.g., on employee pay stubs or in a separate writing provided with the pay stub).</p> <p>Employers must also post a required CA PSL poster and provide written notice of paid sick leave information to all new hires and existing employees (Notice to Employees, Labor Code section 2810.5).</p> <p>If both state and local laws apply, an employer must give the more generous benefit provided.</p>	<p>Generally, employers must reinstate employees returning from leave. However, the EFMLEA provides an exception for employers with 25 or fewer employees, if all the following conditions are met:</p> <ul style="list-style-type: none"> ▪ The employee takes an EFMLEA leave; ▪ The position held by the employee at the commencement of the leave no longer exists due to economic conditions or other changes in operations; ▪ The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; ▪ If the above reasonable efforts fail, the employer makes reasonable efforts during a one-year period, following the end of the employee's leave, to contact the employee if an equivalent position becomes available. 	<p>EPSLA cannot be conditioned on an employee finding a replacement to cover the hours during which the employee is using paid sick time.</p> <p>EPSLA must be provided to employees in addition to any existing paid leave policies that an employer already provides.</p> <p>Employers may not require employees to use other forms of paid time off before using paid sick time under the EPSLA.</p>