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Governor Newsom Mandates Paid Sick Leave For Certain Employees of Large Agricultural Employers and Food Service Employers re COVID-19

Governor Newsom issued Executive Order N-51-20 today, April 16, which mandates paid sick leave for certain employees who work for employers in California who have 500 or more employees. According to the Executive Order, it is meant to cover some, but not all, of employees who are not covered by the recent federal FFCRA paid sick leave mandate.

Newsom's Order

The [Executive Order](#) applies to employees who are covered by Industrial Wage Orders 3 (Canning, Freezing and Preserving Industry), 8 (Industries Handling Products After Harvest), 13 (Industries Preparing Agricultural Products for Market, on the Farm), and 14 (Agricultural Occupations), and those employees of food service operations (farmers markets, restaurants, food delivery drivers, etc.), whom the Order describes as Food Sector Workers, and who work for an employer with 500 or more employees. It mandates 80 hours of paid sick leave for full-time employees (those who worked an average of 40 hours or more per week in the two weeks prior to taking leave, or whom the employer considers the employee to be full-time [presumably for purposes of employee benefits, etc.]). Part-time employees are entitled to that amount of hours that they would normally work in two weeks, or 14 times the average amount of hours worked per day over the preceding six months. Any such paid sick leave is in addition to any paid sick leave that is otherwise required by California law (the normal 3 days or 24 hours).

The qualifying reasons for such leave are limited to three circumstances only:

1. The employee is subject to a Federal, state or local quarantine or isolation order related to COVID-19;
2. The employee is advised by a health-care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
3. The employee is prohibited from working by the employer due to concerns related to potential transmission of COVID-19.

Reason 1 is somewhat ambiguous, as all of the quarantine orders currently out there exempt employees in critical infrastructure industries, which would include all of the employees supposedly covered by this Order. We will have to wait to see if there is any clarification on that point.

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This sick leave is paid at the higher of (1) the employee's regular rate of pay for the prior pay period; (2) the state minimum wage; or (3) the local minimum wage where the employee works. Such pay is also capped at \$511 per day, or \$5110 in the aggregate.

The leave is immediately available to covered employees. Employers may not require employees to utilize any other leave that they may have prior to utilizing this leave.

The Labor Commissioner is required to publish a notice for this issue which will need to be posted. Posting can be accomplished by emailing it to employees.

There are a couple of key differences between this Order and the FFCRA paid sick leave. One, there are not tax credits for paying this sick leave. Two, you do not have to pay this sick leave if you already offer a benefit that would pay the employee above what this benefit would pay them.

What This Means for Employers:

The shoe has finally fallen for large employers. We suspect that there will be clarification of some of the issues presented by this mandate in the near future. We remain open and available to answer your questions. We will continue to keep you up to date as additional information becomes available. Contact Barsamian & Moody for any questions on the managing coronavirus issues in the workplace.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.