



# 2021 Cal-Peculiarities Webinar

## *Series 1: COVID-19 Supplemental Sick Pay*

Dana Howells

Coby Turner

Ann Marie Zaletel

**June 23, 2021**

**Seyfarth Shaw LLP**

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





# Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

## **Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

© 2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

# Speakers

---



**Dana Howells**

Seyfarth Shaw  
*Senior Counsel*  
Los Angeles - Downtown  
(213) 270-9678  
[DHowells@seyfarth.com](mailto:DHowells@seyfarth.com)



**Coby Turner**

Seyfarth Shaw  
*Partner*  
Sacramento  
(916) 498-7001  
[CTurner@seyfarth.com](mailto:CTurner@seyfarth.com)



**Ann Marie Zaletel**

Seyfarth Shaw  
*Partner*  
Los Angeles – Century City  
(310) 201-1560  
[AZaletel@seyfarth.com](mailto:AZaletel@seyfarth.com)

# Agenda



- 01** California Supplemental Paid Sick Leave
- 02** Cal/OSHA Earnings Continuation
- 03** Local California Supplemental Paid Sick Leaves
- 04** Hazard/Hero Pay & Paid Leave

# Avenues for California COVID-19 Paid Sick Leave

---

**State**

**Cal/OSHA**

**Local**

**Hazard Pay**

# 2020 California COVID-19 Supplemental Paid Sick Leave Refresher



- There were two separate California COVID-19 supplemental paid sick leave laws in 2020:
  - California COVID-19 Supplemental Paid Sick Leave for **Food Sector Workers** (Effective April 16, 2020)
  - California COVID-19 Supplemental Paid Sick Leave for **Non-Food Sector Workers** (Effective September 19, 2020)
- The laws applied only to employers with **more than 500 employees**
- The laws covered California **employees who left their homes to perform work** for a covered employer
- The laws provided up to 80 hours of SPSL for covered employees who were:
  - Subject to a federal, state, or local COVID-19 quarantine/isolation order;
  - Advised by a HCP to self-quarantine/self-isolate due to COVID-19-related concerns; **or**
  - Prohibited by their employer from working due to health concerns related to the potential transmission of COVID-19
- The laws expired on **December 31, 2020**

# 2021 California COVID-19 Supplemental Paid Sick Leave

## New Law



- A **new** 2021 California COVID-19 Supplemental Paid Sick Leave Law went into effect on March 29, 2021, retroactive to **January 1, 2021**
- The 2021 law is set to expire on **September 30, 2021**
- The 2021 law has **broader coverage**:
  - Covers **employers** with more than **25 employees**
  - Covers employees who are unable to work **or telework**
  - **Practice Pointer:** (Properly classified) independent contractors are not covered
- The 2021 law provides up to **an additional 80 hours** of SPSL for covered reasons

# 2021 California COVID-19 Supplemental Paid Sick Leave

## Qualified Reasons



An employee may use CA SPSL if he/she is unable to work or telework for any of the following reasons:

- **Caring for Oneself:**

- Subject to a quarantine or isolation period related to COVID-19;
- Advised by a HCP to quarantine due to COVID-19-related concerns; or
- Experiencing COVID-19 symptoms and seeking a medical diagnosis

- **Caring for Covered Family Member:**

- Caring for a child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling who:
  - Is subject to a COVID-19-related quarantine/isolation period; or
  - Advised by a HCP to quarantine due to COVID-19-related concerns



# 2021 California COVID-19 Supplemental Paid Sick Leave

## Qualified Reasons



- **Caring for Covered Family Member (continued):**
  - Caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on premises
- **Vaccine-Related Reasons (Employee Only)**
  - Employee is attending a COVID-19 vaccine appointment;
  - Employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework
- **Practice Pointer:**
  - The law does not afford time off to get a child vaccinated
  - But time off for this reason is covered as preventative care under the regular California Paid Sick Leave Law

# 2021 California COVID-19 Supplemental Paid Sick Leave

## Amount of CA SPSL



- **Full-time employees:**
  - Receive up to 80 hours of CA SPSL (not including CA SPSL taken in 2020)
- **Part-time employees:**
  - Normal weekly schedule: The total number of hours the employee is scheduled to work over 2 weeks
  - Variable schedule: 14 times the average number of hours the employee worked each day for the employer in the 6 months preceding the date the employee took CA SPSL
- **Practice Pointer:**
  - If the employee has worked for the employer for less than 6 months but more than 14 days, this calculation shall be made over the entire period the employee has worked for the employer
  - If the employee has worked for the employer for 14 days or less, then the employee receives up to the total number of hours that the employee has worked for the employer

# 2021 California COVID-19 Supplemental Paid Sick Leave

## Calculation of CA SPSL Pay



- **Exempt employees:** CA SPSL pay is calculated in the same manner the employer calculates wages for other forms of paid leave time (e.g., vacation)
  - Note: Most employers pay exempt employee leave time at employees' base salary
- **Non-exempt employees:** CA SPSL is paid at the highest of the following:
  - Regular rate of pay for the workweek in which the employee takes CA SPSL;
  - Calculated by dividing the employee's total wages (not including overtime pay), by the employee's total hours worked in the full pay periods of the prior 90 days;
  - State minimum wage; or
  - Local minimum wage
- **Not to exceed \$511 per day or \$5,110 in total for 2021 California COVID-19 Supplemental Paid Sick Leave**

# 2021 California COVID-19 Supplemental Paid Sick Leave Documentation



- **Available Balance Notification**
  - Employee’s CA SPSL available balance must be reflected on the employee’s itemized wage statement (separate from regular California Paid Sick Leave available balance); **or**
  - Employee must be provided with a separate writing each pay day that reflects includes the employee’s CA SPSL available balance
- **Poster Requirement**
  - Poster available at [2021 COVID-19 Supplemental Paid Sick Leave \(ca.gov\)](#)
- **No Mandatory Documentation**
  - Generally an employer may not require documentation
  - DLSE FAQ: It may be reasonable for an employer to ask for documentation before paying CA SPSL when the employer has other information indicating that the employee is not requesting CA SPSL for a proper purpose

# Cal/OSHA Exclusion Pay (COVID-19)



- Cal/OSHA passed an **Emergency Temporary Standard** on COVID-19, effective November 30, 2020, and revised effective June 17, 2021
- **Who does the ETS cover?** ETS does not apply to people teleworking from home/location of choice, or workplaces covered by ATD Standard
- **Exclusion Pay:** ETS provides for “earnings continuation” for employees who are excluded from work due to workplace-related COVID-19 exposure or illness
  - Employer’s burden to prove with investigation and evidence that it is more likely than not that COVID-19 exposure did not occur in the workplace to avoid exclusion pay
  - Exclusion pay not required if employee is receiving disability or workers’ compensation benefits
  - **New:** If employer determines exception applies, it shall inform employee of exclusion pay denial and applicable exception

# Cal/OSHA Exclusion Pay (COVID-19)



- **Interplay with Other Leaves:**
  - Employer may require exhaustion of CA SPSL, but not regular CA PSL, before providing exclusion pay
  - Employers that provide paid sick leave in excess of state or local law requirements may require exhaustion of that leave
- **Rate of Pay:** Employee's regular rate of pay for the pay period in which the employee is excluded
  - Employees must be paid on regular pay schedule
  - **Practice Pointer:** Creating traction for sick pay litigation where non-exempt employees have variable compensation
- **No CBA exemptions**
- **Note:** The exclusion pay provisions (and testing obligations) were challenged; the request for an injunction was denied

# Local California Supplemental Paid Sick Leaves



## Pre-COVID California Local Paid Sick Leave Laws

- **San Francisco (guidance for COVID)**
- **Oakland**
- **Emeryville (guidance for COVID)**
- **Berkeley**
- **Santa Monica**
- **San Diego (guidance for COVID)**
- **Los Angeles City (guidance for COVID)**
  - Hotels
  - Airport
  - General
- **Long Beach**
  - Hotels

# Local California Supplemental Paid Sick Leaves (COVID-19)



- **Los Angeles City:** Two weeks after period of emergency
- **County of Los Angeles:** Two weeks after period of emergency
- **Long Beach:** City Council to review every 90 days
- **Oakland:** After the expiration of the declaration of emergency unless otherwise extended
- **City of Sacramento:** Expired March 31, 2021
- **County of Sacramento:** Expired March 31, 2021
- **San Francisco:** PHELO Expired April 12, 2021
- **San Jose:** June 30, 2021
- **County of San Mateo:** June 30, 2021 (unless extended)
- **Santa Rosa:** September 30, 2021
- **Sonoma:** June 30, 2021



# Local California Supplemental Paid Sick Leaves (COVID-19)



## Marin County – A Trend?

- Just enacted June 8, 2021 (unincorporated areas only)
- Covers small businesses (25 or fewer to fill gap in state law)
- Sunsets September 30, 2021 (with the federal tax credit)
- 80 hours for full time employees
- Part-time employees: An amount no greater than their average number of hours in a two-week period, calculated over the prior six months

## Covered Uses

- Sick with COVID-19
- Quarantine for COVID-19
- Caring for someone who is ill or quarantining due to COVID-19
- Caring for a senior or child whose normal caretaker or school is closed due to COVID-19
- Attending an appointment for a COVID-19 vaccination

# Local California Supplemental Paid Sick Leaves (COVID-19)



## Issues to Watch For

- Which sick leave law governs remote workers, your location or their home location?
- City/County boundary maps—a good thing
- When is a State of Emergency over?
- What is the rate of pay for sick leave?
- Coverage under the regular state/local sick pay law (not specific to COVID)?
- Special COVID guidance under regular paid sick leave law will not sunset

## Hazard Pay & Paid Leave (COVID-19)



## Grocery Worker/Hero Pay Ordinances

- Certain retail/drug store establishments
- Some janitorial services
  - **Los Angeles County:** Choice of paid time off (PTO) instead of hazard pay
  - **South San Francisco:** Up to four hours of paid leave for vaccination (expired)
  - **Alhambra:** Choice of paid time off (PTO) instead of hazard pay
  - **Daly City:** Up to four hours of paid leave for vaccination
  - **Millbrae:** Up to four hours of paid leave for vaccination

# CLE CODE

## 2021 Webinar Series Schedule



# 2021 Cal-Peculiarities Webinar Series

*How California Employment Law is Different*

- **Series 1: COVID-19 Supplemental Sick Pay**  
Tuesday, June 23, 2021 | 1:00 p.m. – 1:30 p.m. PST
- **Series 2: Hero Pay/Industry Specific New Rehire Laws**  
Tuesday, June 30, 2021 | 1:00 p.m. – 1:30 p.m. PST
- **Series 3: Independent Contractor Intricacies**  
Wednesday, July 6, 2021 | 1:00 p.m. – 1:30 p.m. PST
- **Series 4: Rounding and Meal Periods**  
Wednesday, July 13, 2021 | 1:00 p.m. – 1:30 p.m. PST

[Click here to register for our upcoming webinars!](#)

# Cal-Peculiarities Resources



- **Request Seyfarth's 2021 Cal-Peculiarities eBook**
  - <https://connect.seyfarth.com/34/64/landing-pages/2021-cal-pecs---rsvp-blank.asp?sid=337242d8-d085-41c5-b4e6-39b9233555d5>
- **Download Seyfarth's 2020 Cal-Peculiarities PDF**
  - [https://www.seyfarth.com/dir\\_docs/publications/2021-Cal-Peculiarities.pdf?intlaContactId=1%2btNkRmBqzB53fy6X0SBUQ%3d%3d&intExternalSystemId=1](https://www.seyfarth.com/dir_docs/publications/2021-Cal-Peculiarities.pdf?intlaContactId=1%2btNkRmBqzB53fy6X0SBUQ%3d%3d&intExternalSystemId=1)
- **Subscribe to Seyfarth's California Labor & Employment Mailing List**
  - [connect.seyfarth.com/9/7/landing-pages/subscription.asp](https://connect.seyfarth.com/9/7/landing-pages/subscription.asp)
- **Subscribe to Seyfarth's California Peculiarities Employment Law Blog**
  - [www.calpeculiarities.com](http://www.calpeculiarities.com)

# Contact Information

---



**Dana Howells**

Seyfarth Shaw  
*Senior Counsel*  
Los Angeles - Downtown  
(213) 270-9678  
[DHowells@seyfarth.com](mailto:DHowells@seyfarth.com)



**Coby Turner**

Seyfarth Shaw  
*Partner*  
Sacramento  
(916) 498-7001  
[CTurner@seyfarth.com](mailto:CTurner@seyfarth.com)



**Ann Marie Zaletel**

Seyfarth Shaw  
*Partner*  
Los Angeles – Century City  
(310) 201-1560  
[AZaletel@seyfarth.com](mailto:AZaletel@seyfarth.com)



**Thank You!**