

Summary of California Executive Order N-51-20
COVID-19 Supplemental Paid Sick Leave & Hand Washing Requirement
4/18/20



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On April 16, 2020, Governor Newsom issued Executive Order N-51-20, which requires certain employers of **food sector workers** to provide supplemental paid sick leave and to permit employees working in any food facility to wash their hands every 30 minutes, at a minimum. You can view the full text of Executive Order N-51-20 using the following link: <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>. The Order is **effective immediately**.

This memo contains a summary of Executive Order N-51-20. This memo does not constitute legal advice and is merely offered as a general summary for our Clients, colleagues and associates. Since every business is different and each employer runs a distinct operation, how you decide to proceed should be based upon an individual assessment of your particular operation and the unique circumstances presented by each of your employees. As you work to determine how Executive Order N-51-20 will impact your business, and as the conditions surrounding COVID-19 continue to evolve, we recommend you work closely with your legal counsel to determine how to best proceed for your employees and your operation. Our firm will continue to stay on top of developments related COVID-19 and we are here to assist our Clients in developing a plan for their individual operations.

1. **Hand Washing Requirement for Employees Working in Food Facilities** - Employees working in any food facility (defined in California Health & Safety Code §113789) shall be permitted to wash their hands every 30 minutes and additionally as needed.
2. **Supplemental Paid Sick Leave (“SPSL”) for Food Sector Workers**
 - a. **Effective Dates** - The requirement to provide SPSL shall be effective during the pendency of any Statewide Stay-At-Home Orders issued by the State Public Health Officer. If an Eligible Food Sector Worker is taking SPSL at the time all such Orders expire, the person shall be permitted to take the full amount of SPSL to which that person otherwise would have been entitled under Executive Order N-51-20.
 - b. **Covered Employers / Hiring Entities**
 - **General Rule** - All private business entities with 500 or more employees in the United States are required to provide SPSL to Eligible Food Sector Workers. The following employees must be included in the count:
 - All full-time and part-time employees currently employed, *regardless of how long* they have worked for the Hiring Entity.
 - All employees on leave of any kind.
 - Day laborers supplied by a temporary agency, regardless of whether the Hiring Entity is the temporary agency or the client.
 - Employees of a temporary placement agency who are jointly employed by the Hiring Entity and another employer, regardless of whether the jointly-employed employees are maintained only on the Hiring Entity’s or another employer’s payroll. To determine the number of employees employed, all common employees of joint employers, or all employees of integrated employers, must be counted together.
 - Whether 2 or more entities will be required to count all of their employees for purposes of the SPSL is a complicated issue. We recommend you seek the assistance of counsel if you have questions about joint employer status or the integrated employer test. Additional information about this issue can be viewed using the following link: <https://www.dol.gov/agencies/whd/flsa/2020-joint-employment/fact-sheet>.
 - **Exemption** – A Hiring Entity is not be required to provide an Eligible Food Sector Worker with SPSL if the Hiring Entity provides the relevant person, as of April 16, 2020, with a supplemental benefit (e.g., paid leave) that is

available for the permissible SPSL reasons and that would compensate the person in an amount equal to or greater than the amount the person would be compensated while taking SPSL.

- c. **Eligible Food Sector Workers** – SPSL is immediately available to Food Sector Workers, which include people who satisfy *all* of the following criteria:
- **Job, Industry or Occupation** – The person must work for a Hiring Entity in a job that falls within any of the following categories:
 - Wage Order 3 – Canning, Freezing and Preserving Industry
 - Wage Order 8 – Industries Handling Products After Harvest
 - Wage Order 13 – Industries Preparing Agricultural Products for Market, on the Farm
 - Wage Order 14 – Agricultural Occupations
 - Works for a Hiring Entity that operates a food facility (defined in California Health & Safety Code §113789(a)-(b))
 - Delivers food from a food facility (defined in California Health & Safety Code §113789(a)-(b)) for or through a Hiring Entity
 - **Essential Critical Infrastructure Worker** – The person must be an Essential Critical Infrastructure Worker who is exempt from the Stay-At-Home Order imposed by Executive Order N-33-20.
 - **Location of Work** – The person must leave his/her home or other place of residence to perform work for or through a Hiring Entity.
- d. **3 Permissible Reasons to Take SPSL** – A Hiring Entity is required to provide SPSL to an Eligible Food Sector Worker who is *unable to work* for any of the following 3 reasons:
- **SPSL Reason #1** - The Eligible Food Sector Worker is subject to a Federal, State or Local quarantine or isolation order related to COVID-19.
 - **SPSL Reason #2** - The Eligible Food Sector Worker has been advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.
 - **SPSL Reason #3** - The Eligible Food Sector Worker is prohibited from working by the Hiring Entity due to health concerns related to the potential transmission of COVID-19.
- e. **Maximum Amount of SPSL Hours**
- **General Rules**
 - SPSL is intended to provide a maximum of 80 hours or 2 weeks of SPSL to each Eligible Food Sector Worker. The maximum number of SPSL hours an employee may take depends on the number of hours the employee works.
 - The Eligible Food Sector Worker is entitled to determine the amount of SPSL hours to use, up to the maximum amount the employee is eligible to take.
 - **Full-Time / 40 Hour Per Workweek** – An Eligible Food Sector Worker is entitled to up to *80 hours* of SPSL if s/he satisfies either of the following criteria:
 - The Hiring entity considers the person to be full-time.
 - The person worked or was scheduled to work, on average, 40 hours or more per week for the Hiring Entity in the 2 weeks preceding the date the Eligible Food Sector Worker took SPSL.
 - **All Others** – An Eligible Food Sector Worker who does not satisfy the “Full-Time” criteria is entitled to SPSL as follows:
 - *If the person has a normal weekly schedule* – S/he can take SPSL for up to the total number of hours the person is normally scheduled to work for or through a Hiring Entity over 2 weeks; or
 - *If the person works a variable number of hours* - S/he can take SPSL for up to 14 times the average number of hours the person worked each day for or through the Hiring Entity in the 6 months preceding the date the person took SPSL. If the person has worked for the Hiring Entity fewer than 6 months, this calculation shall instead be made over the entire period the person has worked for the Hiring Entity.
- f. **Compensation for SPSL**
- **Rate of Pay for SPSL** - The amount to be paid for each hour of SPSL is the *highest* of the following rates
 - The Eligible Food Sector Worker’s regular rate of pay from the last pay period
 - California’s minimum wage
 - The local minimum wage to which the Eligible Food Sector Worker is entitled

- **Maximum Daily and Total Payment Amounts** - The maximum amount a Hiring entity is required to pay an Eligible Food Sector Worker is \$511 per day and a total of \$5,110.
- g. **Form or Request to Use SPSL** – SPSL is required to be made available for immediate use by the Eligible Food Sector Worker upon *oral or written request* to the Hiring Entity.
- h. **Pre-Existing Leave Rights**
- SPSL rights are *in addition* to any other paid sick leave that may be available to the Eligible Food Sector Worker under California Labor Code §246.
 - The Hiring Entity may not require an Eligible Food Sector Worker to use any other paid or unpaid leave, paid time off, or vacation time before the person uses SPSL.
- i. **Notice to Employees** – The Labor Commissioner will make a Model Notice available by April 23, 2020. The Notice must be posted. If an employee does not frequent the workplace, the Hiring Entity may disseminate the notice through electronic means (i.e., email).
- j. **Enforcement** – The Labor Commissioner shall enforce the SPSL obligations.