



Bay Area Regional Health Inequities Initiative

Alameda County | City of Berkeley | Contra Costa County | Marin County | Napa County | City and County of San Francisco | San Mateo County | Santa Clara County | Santa Cruz County | Solano County | Sonoma County

Closing Gaps in the Bay Area's Paid Sick Leave Policies: BARHII's Recommendations for Local Action

October 19, 2020

The COVID-19 pandemic has revealed how government policies that undermine the safety of our workforce jeopardize everyone's well-being. That's especially true for workers who can't afford to stay home when they're sick. When workers don't have access to adequate paid sick leave policies, fear of income loss leads many to report to work even when they're ill. This means that sick individuals suffer needlessly. It also increases the spread of infectious diseases to co-workers and customers. Data on past pandemics indicate that this is likely one of the key drivers of COVID-19 transmission in California—which has left roughly one in 50 residents infected and has jeopardized our state's economic future¹.

The lack of adequate paid leave affects many workers. Over 30 million American workers don't have permanent paid sick leave². In 2019, only 14% of workers in California reported having accrued two weeks of paid sick leave³. Lack of paid sick leave disproportionately affects low-wage workers of color. Nationally, just 47% of private industry workers in the lowest wage quartile have this benefit, compared to 90% in the highest quartile⁴. White workers are 13% more likely to have paid leave than Black workers⁵.

With the arrival of COVID-19, federal and state leaders have adopted several emergency paid sick leave (EPSL) policies. In March, the Federal Families First Coronavirus Response Act (FFCRA) was enacted, providing new EPSL protections to some workers through December 31, 2020. In April, Governor Newsom issued Executive Order N-51-20, which provides EPSL to certain food service workers. In September, Governor Newsom signed AB 1867, the California COVID-19 Supplemental Paid Sick Leave Act, which addresses some of the major gaps left by the FFCRA and N-51-20.

While these recent policies are important to protect the health of our workforce and limit the transmission of COVID-19, substantial policy gaps remain. Fortunately, local governments in the Bay Area are stepping forward to take action. Currently, one third of the Bay Area's counties have adopted local EPSL ordinances to fill gaps in the new federal and state laws. We are aware of at least three other counties that are pursuing similar local policies.

¹ <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/11/05/support-for-paid-sick-leave-and-family-leave-policies>

² <https://www.epi.org/multimedia/coronavirus-paid-sick-leave-explainer/>

³ <https://shift.hks.harvard.edu/essential-and-vulnerable-service-sector-workers-and-paid-sick-leave/>

⁴ <https://www.kff.org/womens-health-policy/issue-brief/coronavirus-puts-a-spotlight-on-paid-leave-policies/>

⁵ <https://www.epi.org/publication/black-workers-covid/>

Now is the time for all Bay Area jurisdictions to adopt local paid sick leave policies and invest in robust education and enforcement measures—to protect the health and economic well-being of our region.

Recommendations for Local Action

BARHII recommends that all Bay Area jurisdictions take the following actions to expand and enforce paid sick leave: *(See the chart below for a detailed analysis of gaps in recent state and federal EPSL laws.)*

1. **Adopt local policies that address the most important gaps in federal and state EPSL laws**

- a. **Workers covered:** Include all gig workers, independent contractors, and domestic workers in EPSL coverage
- b. **Duration:** Expand the duration of EPSL protections to sunset only after the state of emergency has been lifted
- c. **Qualifying reasons for leave:** Expand to include the following: *(These qualifying reasons appear in some but not all federal, state, and local EPSL policies)*
 - i. Caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19
 - ii. Caring for an individual who has been advised by a health care provider to self-quarantine related to COVID-19
 - iii. Caring for a child whose school or place of care is closed, or whose childcare provider is unavailable, for reasons related to COVID-19
 - iv. Experiencing mental health issues that disrupt productivity and ability to work, due to COVID-19
 - v. Having health conditions that increase the risk of contracting COVID-19 or of experiencing severe illness or death from COVID-19, as defined by the CDC
- d. **Enforcement:** Adopt local enforcement policies, including citations or penalties, for employers that wrongfully terminate workers for using their paid sick days

2. **Fund and implement robust public awareness campaigns**

- a. Create easily accessible information on local, state, and federal EPSL coverage and available support services for workers and employers
- b. Partner with trusted community-based organizations to create and disseminate culturally responsive messaging to reach communities most impacted by COVID-19, especially Black, Latinx, and Pacific Islander populations
- c. Focus on educating workers and employers about their EPSL rights, enforcement requirements, and the importance of paid sick leave to minimize disease transmission

3. **Invest in legal service providers and enforcement activities**

- a. Provide funding for legal service providers to increase access to attorney support for low-income workers and their families experiencing paid leave issues
- b. Expand services that provide individuals with timely access to information on paid leave that do not require attorney support (e.g. adding EPSL information into 2-1-1 services)
- c. Strengthen local government enforcement activities to ensure all employers are complying with local, state, and federal paid leave policies

4. **Adopt local, long-term paid sick leave policies to protect all workers**

- a. Expand the availability of EPSL during all states of emergency, not just COVID-19
- b. Adopt permanent paid sick leave protections to protect community health and help prevent future public health emergencies

BARHII is here to help!

We stand ready to support you in moving these priorities forward and connecting with others who are leading the way. To learn more, contact BARHII's Asma Day at ADay@barhii.org.

Emergency Paid Sick Leave Protections for COVID-19: What's Covered and What's Not by New Federal and State Laws

10/19/20

| Provisions | Federal FFCRA | CA for Food Workers EO N-51-20 & Codified in AB 1867 | CA COVID-19 Supplemental Paid Leave Act AB 1867 | Priorities to Close Gaps |
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| 1. Type of workers covered | <ul style="list-style-type: none"> Public sector workers Private sector employees of covered employers (Employers of “health care providers” and “emergency responders” may exclude such employees) Self-employed workers are entitled to paid sick leave in the form of a tax credit. (Eligible individuals include those who “would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer) Any immigration status | <ul style="list-style-type: none"> Private sector food industry workers not covered by FFCRA Includes gig-workers Any immigration status | <ul style="list-style-type: none"> Healthcare workers and first responders not covered by FFCRA All other employees with eligible employer size (see below) of any immigration status Does not include gig-workers or independent contractors | <i>Provide coverage for all gig workers, independent contractors, and domestic workers</i> |
| 2. Covered employers | <p>Businesses with fewer than 500 employees</p> <p>(Businesses with fewer than 50 employees may qualify for exemption from requirement to provide leave for school closures and childcare unavailability)</p> | Businesses with more than 500 employees | Businesses with more than 500 employees | <i>Eliminate exemption for small businesses regarding school closures and childcare unavailability</i> |

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| 3. Hours of Sick Leave & Funding | <ul style="list-style-type: none"> • 80 hours (2 weeks) for full-time workers; 14x avg daily pay for past 6 months for regular part-time or less workers • Pay for sick leave capped at \$511 per day and \$5,110 total for your own health; \$200 per day and \$2,000 total for caregiving • Paid for by employer. Employers provided dollar-for-dollar federal tax credit reimbursements | <ul style="list-style-type: none"> • Hours mirror FFCRA • Pay for sick leave capped at \$511 per day and \$5,110 total • Paid for by employer | <ul style="list-style-type: none"> • Hours mirror FFCRA and adds: For employees w/variable hours & worked <14 days, the total # of hours they worked for employer • Pay for sick leave capped at \$511 per day and \$5,110 total • Paid for by employer | <p><i>Provide tax credit reimbursement for employers with fewer than 500 employees</i></p> |
| 4. Qualifying reasons for leave | <p>The employee is unable to work (or telework) because the employee:</p> <ul style="list-style-type: none"> • is subject to a federal, state, or local quarantine or isolation order related to COVID-19 • has been advised by a health care provider to self-quarantine related to COVID-19 • is experiencing COVID-19 symptoms and is seeking a medical diagnosis • is caring for an individual subject to an order described in first two points above, or self-quarantine related to COVID-19 • is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19, or • is experiencing substantially-similar condition specified by the Secretary of Health and Human Services | <p>The worker must be unable to work because the worker:</p> <ul style="list-style-type: none"> • is subject to a federal, state, or local quarantine or isolation order related to COVID-19 • is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19, or • is prohibited from working by the worker's hiring entity due to health concerns related to the potential transmission of COVID-19. | <p>The employee is unable to work (or telework) because the employee:</p> <ul style="list-style-type: none"> • is subject to a federal, state, or local quarantine or isolation order related to COVID-19 • is advised by a healthcare provider to self-quarantine or self-isolate due to concerns related to COVID-19, or • is prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19. | <p><i>California paid leave provisions should also cover caregiving and school and childcare closures. Specifically, it should cover a worker who:</i></p> <ul style="list-style-type: none"> • <i>is caring for an individual subject to 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</i> • <i>is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19</i> <p><i>Paid leave policies should also cover a worker who:</i></p> <ul style="list-style-type: none"> • <i>is experiencing mental health issues that disrupt productivity and ability to work due to COVID-19</i> • <i>has conditions that increase the risk of contracting COVID-19 or of severe illness or death from COVID-19, as defined by the CDC</i> |

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| 5. Extended leave for school or childcare closure | 12 weeks (10 weeks after the 2 weeks of COVID-19 related EPSL) of additional paid family leave available if caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19. | Individuals only, not for school closures or family care | Individuals only, not for school closures or family care | <i>Make 10 weeks of expanded family leave available for employees working for employers with more than 500 employees to deal with childcare and school closures</i> |
| 6. End date of coverage | December 31st, 2020 | December 31st, 2020, or upon expiration of FFCRA if extended | December 31st, 2020, or upon expiration of FFCRA | <i>Extend for all states of emergency until the state of emergency ends</i> |
| 7. Notice Requirement | Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time. | Employers must disseminate the model notice to employees provided by the Labor Commissioner. If workers do not frequent a workplace, a business can disseminate notice electronically | Employers outside food sector must update their wage statements, or separate writing, to provide notice of amount of supplemental paid sick leave available each pay period. Model notice is available. | <i>Employee or worker may provide verbal or written notice to employer upon learning of their qualifying need for taking paid leave, and employer documents the communication that is verified and agreed upon with the employee</i> |
| 8. Enforcement | <ul style="list-style-type: none"> Employers in violation of the first two weeks paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or childcare provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. | Allows California’s Labor Commissioner to cite workplaces for a lack of paid sick days. Employee can file wage and/or retaliation claim with the Labor Commissioner. | Allows California’s Labor Commissioner to cite workplaces for a lack of paid sick days Employee can file wage and/or retaliation claim with the Labor Commissioner. | <i>Expand citations or penalties for all employers that wrongfully terminate workers or employees for using their paid sick days.</i> <i>Create a private right of action for all violations.</i> |