



## WORKING PARTNERSHIPS USA

February 17<sup>th</sup>, 2021

Honorable Gavin Newsom  
Governor, State of California

Honorable Toni Atkins  
President pro Tempore, California State Senate

Honorable Anthony Rendon  
Speaker, California State Assembly

Honorable Nancy Skinner  
Chair, Senate Budget and Fiscal Review  
Committee

Honorable Phil Ting,  
Chair, Assembly Committee on Budget

To: Governor Newsom and the California State Assembly and Senate

We write to you to ask that you support Emergency Paid Sick Leave. California's economy cannot recover until the spread of COVID-19 is under control, and the spread of COVID-19 cannot be controlled without adequate access to paid sick leave.

### **Millions of workers cannot access adequate paid sick leave for COVID-19.**

On January 1, 2021, the Families First Coronavirus Response Act and AB 1867 expired, leaving millions of workers across the state without adequate access to paid job protected leave. Although some state and local measures provide limited and specific support, for millions of workers, staying home to protect the public health can mean losing their job and necessary income. Facing this choice, many workers go

to work sick, endangering their coworkers and communities. For all of our safety, California needs to guarantee two weeks of Emergency Paid Sick Leave to infected, exposed, and caregiving workers.

### **Cal/OSHA's ETS does not meet our state's needs for COVID-19 sick leave.**

Cal/OSHA's Emergency Temporary Standard (ETS) is intended to provide workplace health and safety standards to prevent COVID-19 exposure at work. It is not intended to meet California's need for COVID-19 paid sick leave, nor does it. The ETS only provides paid leave for workers who a) contract or are exposed to COVID-19 at work,<sup>1</sup> b) fit narrow guidelines of needing to be excluded from work for public safety,<sup>2</sup> and c) are able and available to work - meaning that their symptoms do not prevent them from working.<sup>3</sup> COVID-19 contracted outside of work is just as contagious as COVID-19 contracted at work. This protection covers a narrow set of employees exposed to COVID-19. Despite this, the California Chamber of Commerce is currently advocating for ETS exclusion pay to be further narrowed.

### **California's Paid Sick Days law does not meet our state's needs.**

Employers in California are required to allow their employees to accrue and use up to 24 hours of paid sick leave per year. All available guidance shows that three days of quarantine is insufficient to prevent the spread of COVID-19. When workers are forced to return to work only three days after COVID-19 symptoms or exposure because they cannot afford to lose their income, it harms all of us. Three Paid Sick Days per year is in no way adequate to meet the challenge of COVID-19.

### **Leave under California Family Rights Act and the Family and Medical Leave Act is unpaid and millions of workers are ineligible.**

Full-time tenured California workers may be able to access additional job-protected but unpaid time off from work under the California Family Rights Act or the Family Medical Leave Act. But this is not sufficient. If workers know they will lose income and be unable to pay their rent or afford groceries for their children, they may feel forced to keep working.<sup>4</sup>

### **Paid Vacation and Paid Time Off are not available for millions of workers, especially those with low-wages.**

Some employers choose to provide additional paid time off, paid sick days, or vacation, but this is not assured. Low-wage frontline workers, who are disproportionately people of color and immigrants, who we necessarily encounter in our day-to-day activities, are less likely to have these benefits. When workers go to work sick or send their kids to school sick, it endangers all of us. As a state, we simply cannot and should not rely on individual employers' good will to protect our families.

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<sup>1</sup> From DIR's FAQ: **Q:** Must an employer pay an employee while the employee is excluded from work?

**A:** If the employee is able and available to work, the employer must continue to provide the employee's pay and benefits. . . . **These obligations do not apply if an employer establishes the employee's exposure was not work-related.** (emphasis added) <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

<sup>2</sup> From DIR's FAQ: **Q:** How long does an employee with COVID-19 exposure, or who tests positive for COVID-19 from the workplace, receive pay while excluded from the workplace?

**A: An employee would typically receive pay for the period the employee is quarantined, which could be up to 14 days** . . .(emphasis added) <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

<sup>3</sup> From DIR's FAQ: **Q:** Does an employer have to "maintain an employee's earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job" if the employee is unable to work because of his or her COVID-19 symptoms?

**A: No, if an employee is unable to work because of his or her COVID-19 symptoms, then he or she would not be eligible for exclusion pay and benefits.** (emphasis added)  
<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

<sup>4</sup> Some workers may be able to access partial pay through State Disability Insurance or Paid Family Leave, but SDI and PFL payments are delayed and many workers, especially low earners, cannot survive on 60 or 70% of their pay, much less go weeks without any income.

## Who can currently access paid leave?

### 1. Workers exposed to COVID-19 outside of work?

**Only 3 days of fully paid leave total. Not enough time to prevent infecting others.**

Protections: 3 California Paid Sick Days per year. May qualify for partial pay through SDI.

### 2. Workers exposed to COVID-19 at work who get sick?

**Only 3 days of fully paid leave total. Not enough time to prevent infecting others.**

Protections: 3 California Paid Sick Days per year. May qualify for partial pay through Workers' Compensation.

### 3. Workers exposed to COVID-19 at work who are asymptomatic or have only mild symptoms?

**Fully paid by employer during time employee is quarantined and excluded from work, generally up to 14 days.** If the employee has paid sick days that can be used for this purpose (e.g., if the state passes COVID-19 Paid Sick Leave or the employee works in a locality with COVID-19 Paid Sick Leave), the employer can require the employee to use these paid sick days first.

Protections: Cal/OSHA Emergency Temporary Standard. Possibly 3 California Paid Sick Days.

### 4. Workers who need to care for sick family?

**Only 3 days of fully paid leave total. Not enough time to prevent family member (e.g., a sick child returning to school) infecting others.**

Protections: 3 California Paid Sick Days per year. May qualify for partial pay through PFL.

### 5. Workers who need to care for a child whose usual care is unavailable because of COVID-19?

**No paid leave.**

## Is this confusing? Emergency Paid Sick Leave is the straightforward solution.

If you do not feel like you have a full understanding of California workers' current rights to paid leave, you can be confident that most California workers do not either. Navigating this complex web of rights may be particularly difficult for low-earning workers with limited English proficiency or low-literacy who are fearing for their or their family's health.

California needs to provide Emergency Paid Sick Leave for all California workers, or COVID-19 will continue to spread through schools, workplaces, and consumer interactions. Two weeks of Emergency COVID-19 Paid Sick Leave, covering all California workers, and all of their leave needs (illness, exposure, vaccination and vaccination effects, family care, and childcare) is simple, easy to understand, and absolutely necessary to stop the spread of COVID-19.

### **Enforcement under PAGA is limited and employers are able to cure.**

Workers are not looking for a reason to sue their employer, they are trying to survive. More than 47,000 Californians have died as a result of the COVID-19 pandemic and the number is growing every day. The Chamber of Commerce claims that there has been an outpouring of litigation based on COVID-19 protections, but this is false. The Chamber's source<sup>5</sup> for this claim identifies only **nineteen** COVID-19 leave related cases against employers with 50 or fewer employees in California since the start of the pandemic. That's **47,000 deaths and only 19 leave lawsuits**. If California institutes an adequate paid sick leave policy that covers all workers in the state who are unable to work because of COVID-19, it will be significantly more straightforward for employers to meet their obligations. The Federal Government has already extended tax credits to cover the cost of this paid sick leave for employers with fewer than 500 employees. Furthermore, employers have an opportunity to "cure" any violation of paid sick leave within 33 days under PAGA before any litigation can commence.

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<sup>5</sup> <https://www.fisherphillips.com/covid-19-litigation>

Emergency Paid Sick Leave is simple and straightforward - pay employees for two weeks and do not fire them for taking necessary leave because of COVID-19. Responsible employers are already doing this. But because of the contagious nature of COVID-19, we need *all* employers to do this.

### **The economic benefits of Paid Sick Leave outweigh the costs.**

As of February 16th, 2021 more than 3.4 million Californians had tested positive for COVID-19 and more than 47,000 Californians had died. While the availability of the vaccine is a positive development, overall vaccination rates remain low, and there are disturbing racial disparities in vaccinations. Latinos make up 39.3% of the state's population, but 16% of those currently vaccinated and 48.5% of California's COVID-19 deaths. Pacific Islanders make up only 0.4% of those vaccinated, but their COVID-19 case rate is 30% higher than the state average.<sup>6</sup>

Paid sick leave is a critical public health intervention that stops the spread of COVID-19. Workers without paid sick leave are 1.5 times more likely to go to work when infectious,<sup>7</sup> and the 2020 FFCRA paid sick leave protections prevented about 400 cases of COVID-19 per state per day, or about 1 case per 1300 workers per day.<sup>8</sup> A study in Wisconsin estimated that if paid sick leave were available to all workers in the state in 2021, it would significantly reduce the spread of COVID-19 and potentially save an estimated 75 lives each month.<sup>9</sup> California's public health experts recognize the need for Emergency Paid Sick Leave. A UCLA study, "COVID-19 in Vulnerable Communities" recommended paid sick leave as a necessary public health intervention.<sup>10</sup> A report from UC Merced found that worker distress was highly correlated with the spread of COVID-19.<sup>11</sup>

If anyone in our community lacks the protections they need to stay home when sick or contagious, we are all potentially impacted. This virus does not stop at city or county borders. California's economy will be unable to recover until we stop the spread of COVID-19, and in order to do that, we need to enact paid sick leave that will allow workers to follow public health advice without risking their job or pay.

### **Please protect California's families, economy, and future, by supporting two weeks of Emergency Paid Sick Leave.**

If you have questions about the need for Emergency Paid Sick Leave or how it would fit with existing protections, please contact Katie Wutchiett, Legal Aid at Work ([kwutchiett@legalaidatwork.org](mailto:kwutchiett@legalaidatwork.org)), Mariko Yoshihara, California Employment Lawyers Association ([mariko@ccla.org](mailto:mariko@ccla.org)), or Katie Waters-Smith, California Work & Family Coalition ([katie@workfamilyca.org](mailto:katie@workfamilyca.org)).

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<sup>6</sup> <https://covid19.ca.gov/> (includes case, vaccination, and death rates by race)

<sup>7</sup> <https://worldpolicycenter.org/sites/default/files/Fact%20Sheet%20-%20Protecting%20Health%20During%20COVID-19%20and%20Beyond%20-%202011May2020.pdf>

<sup>8</sup> <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863&sa=D&source=editors&ust=1613584185499000&usq=AOvVaw0Jqf3Fz78zV1m704wawnMy>

<sup>9</sup> [https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2021/01/HealthyWorkersThrivingWisconsin\\_FullReport.pdf?eType%3DEmailBlastContent%26eld%3D81f448b6-1c2d-4be2-b974-7fbc7e0cd8eb&sa=D&source=editors&ust=1613584185506000&usq=AOvVaw1hkArlnOxSEyZEdPfyZD8q](https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2021/01/HealthyWorkersThrivingWisconsin_FullReport.pdf?eType%3DEmailBlastContent%26eld%3D81f448b6-1c2d-4be2-b974-7fbc7e0cd8eb&sa=D&source=editors&ust=1613584185506000&usq=AOvVaw1hkArlnOxSEyZEdPfyZD8q)

<sup>10</sup> <https://latino.ucla.edu/wp-content/uploads/2020/07/LPPI-LA-v-NY-Report.pdf>

<sup>11</sup> [https://clc.ucmerced.edu.672elmp01.blackmesh.com/sites/clc.ucmerced.edu/files/page/documents/hidden\\_threat\\_july\\_12.pdf&sa=D&source=editors&ust=1613584185512000&usq=AOvVaw3KMGejuAobSOdN5cndhwTN](https://clc.ucmerced.edu.672elmp01.blackmesh.com/sites/clc.ucmerced.edu/files/page/documents/hidden_threat_july_12.pdf&sa=D&source=editors&ust=1613584185512000&usq=AOvVaw3KMGejuAobSOdN5cndhwTN)

Sincerely,

ACLU of California

Business & Professional Women of Nevada County

California Employment Lawyers Association

California Work & Family Coalition

Equal Rights Advocates

Friends Committee on Legislation of California

Legal Aid at Work

NARAL Pro-Choice California

The Jewish Center for Justice

Working Partnerships USA