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## **AB-1867 Small employer family leave mediation: handwashing: supplemental paid sick leave. (2019-2020)**

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### **Assembly Bill No. 1867**

#### **CHAPTER 45**

An act to add and repeal Section 12945.21 of the Government Code, to add Section 113963 to the Health and Safety Code, and to amend Section 248.5 of, and to add Sections 248 and 248.1 to, the Labor Code, relating to worker protections, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[ Approved by Governor September 09, 2020. Filed with Secretary of State September 09, 2020. ]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1867, Committee on Budget. Small employer family leave mediation: handwashing: supplemental paid sick leave.

(1) Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Department of Fair Employment and Housing (DFEH) within the Business, Consumer Services, and Housing Agency to enforce civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status. Under FEHA, the DFEH has specified powers, including the power to receive, investigate, conciliate, mediate, and prosecute certain complaints. The Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act, which is a part of FEHA, makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave, as specified.

This bill would, upon specified circumstances, require the DFEH to create a small employer family leave mediation pilot program, as prescribed. The pilot program would authorize a small employer or the employee to request all parties to participate in mediation through the DFEH's dispute resolution division within a specified timeframe, after notice. The bill would prohibit an employee from pursuing civil action until the mediation is complete if an employer or employee requests mediation, as prescribed. The bill would toll the statute of limitations for the employee, including for additional related claims, from receipt of a request to participate in the program until the mediation is complete. These provisions of the bill would be repealed on January 1, 2024.

(2) Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and delegates the enforcement of those standards to the State Department of Public Health and local health agencies. Existing law requires food employees to keep their hands and exposed portions of their arms clean, washing as specified, and regulates the provision of handwashing facilities. A violation of these provisions is a misdemeanor, punishable as prescribed.

This bill would require a food employee working in any food facility to be permitted to wash their hands every 30 minutes and additionally as needed. By changing the scope of an existing crime, the bill would impose a state-mandated local program.

(3) Existing law, the Healthy Workplaces, Healthy Families Act of 2014, entitles an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment to paid sick days. Under existing law, an employee accrues paid sick days at a rate of not less than one hour per every 30 hours worked, subject to certain use, accrual, and yearly carryover limitations. Existing law authorizes an employer to use a different accrual method from that described above, provided that the accrual is on a regular basis so that the employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year or in each 12-month period. Under existing law, an employer is not required to provide additional paid sick leave if the employer has a paid leave policy or paid time off policy and makes available an amount of leave to employees under the same conditions and the policy satisfies the accrual, carryover, and use requirements described above. Existing law requires an employer, in each workplace of the employer, to display a poster in a conspicuous place containing specified information on paid sick days. Existing law requires the Labor Commissioner to create a poster containing this information and make it available to employers. Existing law requires the Labor Commissioner to enforce the act and provides for procedures, including investigation and hearing, and for remedies and penalties.

This bill would establish COVID-19 food sector supplemental paid sick leave for food sector workers, as prescribed. The bill would require a hiring entity to provide a number of hours of COVID-19 food sector supplemental paid sick leave, determined as prescribed, to each food sector worker who performs work for or through the hiring entity if that food sector worker is unable to work due to any of specified reasons relating to COVID-19. The bill would authorize a food sector worker to determine how many hours of this leave to use, up to the total number of hours to which the worker is entitled. Under the bill, the rate of compensation would be the highest of the food sector worker's regular rate of pay in the last pay period, the state minimum wage, or an applicable local minimum wage, up to daily and aggregate total maximum payments. The bill would exempt a hiring entity from being required to provide the COVID-19 food sector supplemental paid sick leave if the hiring entity provides the relevant food sector worker, as of the effective date of the bill's provisions, with a specified other supplemental benefit. The bill would require the Labor Commissioner to enforce the COVID-19 food sector supplemental paid sick leave provisions, as provided. For purposes of enforcement, the bill would deem all food sector workers to be employees and any hiring entity to be an employer. The bill would define terms for these purposes.

This bill would similarly establish COVID-19 supplemental paid sick leave for covered workers, including certain persons employed by private businesses of 500 or more employees or persons employed as certain types of health care providers or emergency responders by public or private entities. The bill would require the Labor Commissioner to make publicly available a model notice relating to COVID-19 supplemental paid sick leave for covered workers for purposes of the posting requirements under existing law. The bill would permit notice by electronic means in lieu of posting, for purposes of COVID-19 supplemental paid sick leave only, if a hiring entity's covered workers do not frequent a workplace.

The bill's requirements to provide COVID-19 food sector supplemental paid sick leave and COVID-19 supplemental paid sick leave for covered workers would expire on December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act, whichever is later.

This bill would appropriate \$100,000 from the Labor and Workforce Development Fund to the Labor Commissioner for staffing resources to implement and enforce the provisions related to the COVID-19 supplemental paid sick leave for covered workers and COVID-19 food sector supplemental paid sick leave.

The bill would require the Labor Commissioner to enforce existing law and the bill's provisions through prescribed procedures.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 12945.21 is added to the Government Code, to read:

**12945.21.** (a) The department shall create a small employer family leave mediation pilot program for employers with between 5 and 19 employees. Under the pilot program, such an employer may, within 30 days of receipt of a right-to-sue notice alleging a violation of Section 12945.2, or the employee may, within 30 days of obtaining a right-to-sue notice alleging a violation of Section 12945.2, request all parties to participate in the department's dispute resolution division. The right-to-sue notice shall include or be accompanied by a written statement describing the parties' right to participate in the mediation pilot program, including information on the timeframe to request mediation. If the employer or employee requests mediation in compliance with this subdivision, the employee shall not pursue any civil action under this section until the mediation is complete. The department shall initiate the mediation promptly following the request. The employee's statute of limitations, including for all related claims not under this section, shall be tolled upon receipt of a request to participate in the department's dispute resolution division under this subdivision until the mediation is complete. For purposes of this subdivision, a mediation is complete when, at any time after the employer or employee's request, the department notifies the parties that it believes further mediation would be fruitless.

(b) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

**SEC. 2.** Section 113963 is added to the Health and Safety Code, to read:

**113963.** Consistent with Section 113952, a food employee working in any food facility, as defined in Section 113789 of the Health and Safety Code, shall be permitted to wash their hands every 30 minutes and additionally as needed.

**SEC. 3.** Section 248 is added to the Labor Code, to read:

**248.** (a) As used in this section:

(1) "COVID-19 food sector supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Food sector worker" means any person who satisfies all of the following criteria:

(A) The person satisfies one or more of the following criteria:

(i) The person works in an industry or occupation defined in paragraph (B) of Section 2 of IWC Wage Order 3-2001, paragraph (H) of Section 2 of IWC Wage Order 8-2001, paragraph (H) of Section 2 of IWC Wage Order 13-2001, or paragraph (D) of Section 2 of IWC Wage Order 14-2001.

(ii) The person works for a hiring entity that operates a food facility, as defined in Section 113789 of the Health and Safety Code.

(iii) The person delivers food from a food facility, as defined in Section 113789 of the Health and Safety Code, for or through a hiring entity.

(B) The person leaves the person's home or other place of residence to perform work for or through the person's hiring entity.

(3) "Hiring entity" means a private sole proprietorship or any kind of private entity whatsoever, including, but not limited to, any kind of corporation, partnership, limited liability company, limited liability partnership, or any other kind of business enterprise, and specifically including, but not limited to, any delivery network company, as defined in subdivision (b) of Section 6041.5 of the Revenue and Taxation Code, and any transportation network company, as defined in subdivision (c) of Section 5431 of the Public Utilities Code, that has 500 or more employees in the United States. For purposes of this paragraph, Section 826.40(a)(1) and (2) of Title 29 of the Code of Federal Regulations shall be used to determine the number of employees that the hiring entity employs.

(4) "IWC Wage Order" means a wage order of the Industrial Welfare Commission.

(b) A food sector worker shall be entitled to COVID-19 food sector supplemental paid sick leave as follows:

(1) A hiring entity shall provide COVID-19 food sector supplemental paid sick leave to each food sector worker who performs work for or through the hiring entity if that food sector worker is unable to work due to any of the following reasons:

(A) The food sector worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

(B) The food sector worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.

(C) The food sector worker is prohibited from working by the food sector worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

(2) A food sector worker shall be entitled to the following number of hours of COVID-19 food sector supplemental paid sick leave:

(A) A food sector worker is entitled to 80 hours of COVID-19 food sector supplemental paid sick leave, if the food sector worker satisfies either of the following criteria:

(i) The hiring entity considers the food sector worker to work "full time."

(ii) The food sector worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the food sector worker took COVID-19 food sector supplemental paid sick leave.

(B) A food sector worker who does not satisfy either of the criteria in subparagraph (A) is entitled to an amount of COVID-19 food sector supplemental paid sick leave as follows:

(i) If the food sector worker has a normal weekly schedule, the total number of hours the food sector worker is normally scheduled to work for or through a hiring entity over two weeks.

(ii) If the food sector worker works a variable number of hours, 14 times the average number of hours the food sector worker worked each day for or through the hiring entity in the six months preceding the date the food sector worker took COVID-19 food sector supplemental paid sick leave. If the food sector worker has worked for the hiring entity fewer than six months, this calculation shall instead be made over the entire period the food sector worker has worked for the hiring entity.

(C) The total number of hours of COVID-19 food sector supplemental paid sick leave to which a food sector worker is entitled pursuant to subparagraph (A) or (B) shall be in addition to any paid sick leave that may be available to the food sector worker under Section 246, but shall not be in addition to the total number of hours of supplemental paid sick leave available to the worker under Executive Order N-51-20.

(D) A food sector worker may determine how many hours of COVID-19 food sector supplemental paid sick leave to use, up to the total number of hours to which the food sector worker is entitled pursuant to subparagraph (A) or (B). The hiring entity shall make COVID-19 food sector supplemental paid sick leave available for immediate use by the food sector worker, upon the oral or written request of the worker to the hiring entity.

(E) A hiring entity is not required to provide a food sector worker more than the total number of hours of COVID-19 food sector supplemental paid sick leave to which the food sector worker is entitled pursuant to subparagraph (A) or (B) above.

(3) (A) Each hour of COVID-19 food sector supplemental paid sick leave shall be compensated at a rate equal to the highest of the following:

(i) The food sector worker's regular rate of pay for the food sector worker's last pay period.

(ii) The state minimum wage.

(iii) The local minimum wage to which the food sector worker is entitled.

(B) Notwithstanding subparagraph (A), a hiring entity shall not be required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to a

food sector worker for COVID-19 food sector supplemental paid sick leave taken by the worker.

(4) A hiring entity shall not require a food sector worker to use any other paid or unpaid leave, paid time off, or vacation time provided by the hiring entity to the food sector worker before the food sector worker uses COVID-19 food sector supplemental paid sick leave or in lieu of COVID-19 food sector supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a hiring entity already provides the relevant food sector worker with a supplemental benefit, such as supplemental paid leave, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that would compensate the food sector worker in an amount equal to or greater than the amount of compensation for taking COVID-19 food sector supplemental paid sick leave to which the food sector worker would otherwise be entitled as set forth under paragraph (3) of subdivision (b), then the hiring entity may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 food sector supplemental paid sick leave that the hiring entity is required to provide to the food sector worker under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental paid benefit or leave that may be counted does not include paid sick leave to which the food sector worker is entitled under Section 246, but may include paid leave already provided by the hiring entity pursuant to Executive Order N-51-20 or supplemental paid leave provided pursuant to federal or local law for the same reasons set forth in paragraph (1) of subdivision (b).

(d) (1) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of such enforcement and to implement COVID-19 food sector supplemental paid sick leave, this section shall apply as follows:

(A) The Labor Commissioner shall enforce this section as if COVID-19 food sector supplemental paid sick leave constitutes "paid sick days," "paid sick leave," or "sick leave" under subdivision (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5. Any claim by a covered worker that is enforceable by the Labor Commissioner for supplemental paid sick leave pursuant to Executive Order N-51-20 shall also be enforceable through this section.

(B) Section 249 applies to COVID-19 food sector supplemental paid sick leave.

(2) For purposes of sections of this code cited in subparagraphs (A) to (C), inclusive, of paragraph (1), in construing this section all food sector workers shall be considered employees and any hiring entity shall be considered an employer.

(e) The requirement to provide COVID-19 food sector supplemental paid sick leave as set forth in this section applies retroactively to April 16, 2020, and shall expire on December 31, 2020 or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), whichever is later, except that a food sector worker taking COVID-19 food sector supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 food sector supplemental paid sick leave to which that food sector worker otherwise would have been entitled under this section.

**SEC. 4.** Section 248.1 is added to the Labor Code, to read:

**248.1.** (a) As used in this section:

(1) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Covered worker" means any person who satisfies the following criteria:

(A) The person satisfies one or more of the following criteria:

(i) The person is employed by a hiring entity, as defined in subparagraph (A) of paragraph (3).

(ii) The person is employed as a health care provider or emergency responder, as defined under Section 826.30(c) of Title 29 of the Code of Federal Regulations, by a hiring entity as defined in subparagraph (B) of paragraph (3) that has elected to exclude such employees from emergency paid sick leave under the federal Families First Coronavirus Response Act (Public Law 116-127).

(B) The person satisfying one or more of the criteria in subparagraph (A) leaves the person's home or other place of residence to perform work for the person's hiring entity.

(C) Notwithstanding subparagraph (A), a "covered worker" shall not include any of the following:

(i) A person who works in an industry or occupation defined in paragraph (B) of Section 2 of IWC Wage Order 3-2001, paragraph (H) of Section 2 of IWC Wage Order 8-2001, paragraph (H) of Section 2 of IWC Wage Order 13-2001, or paragraph (D) of Section 2 of IWC Wage Order 14-2001.

(ii) A person who works for a hiring entity that operates a food facility, as defined in Section 113789 of the Health and Safety Code.

(iii) A person who delivers food from a food facility, as defined in Section 113789 of the Health and Safety Code, for or through a hiring entity.

(3) "Hiring entity" means either of the following:

(A) A private sole proprietorship or any kind of private entity whatsoever, including, but not limited to, any kind of corporation, partnership, limited liability company, limited liability partnership, or any other kind of business enterprise that has 500 or more employees in the United States. For purposes of this paragraph, Section 826.40(a)(1) and (2) of Title 29 of the Code of Federal Regulations shall be used to determine the number of employees that the hiring entity employs.

(B) An entity, including a public entity, that employs health care providers or emergency responders as defined under Section 826.30(c) of Title 29 of the Code of Federal Regulations, and that has elected to exclude such employees from emergency paid sick leave under the federal Families First Coronavirus Response Act (Public Law 116-127).

(4) "IWC Wage Order" means a wage order of the Industrial Welfare Commission.

(b) A covered worker shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) A hiring entity shall provide COVID-19 supplemental paid sick leave to each covered worker who performs work for the hiring entity if that covered worker is unable to work due to any of the following reasons:

(A) The covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

(B) The covered worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.

(C) The covered worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

(2) A covered worker shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A covered worker is entitled to 80 hours of COVID-19 supplemental paid sick leave, if the covered worker satisfies either of the following criteria:

(i) The hiring entity considers the covered worker to work "full time."

(ii) The covered worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the covered worker took COVID-19 supplemental paid sick leave.

(B) Notwithstanding subparagraph (A), a covered worker who is an active firefighter who was scheduled to work more than 80 hours for the hiring entity in the two weeks preceding the date the covered worker took COVID-19 supplemental paid sick leave is entitled to an amount of COVID-19 supplemental paid sick leave equal to the total number of hours that the covered worker was scheduled to work for the hiring entity in those two preceding weeks. This subparagraph applies to an active firefighting member of any of the following:

(i) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(ii) A fire department of the University of California and the California State University.

(iii) The Department of Forestry and Fire Protection.

(iv) A county forestry or firefighting department or unit.

(v) A fire department that serves a United States Department of Defense installation and whose firefighters are certified by the United States Department of Defense as meeting its standards for firefighters.

(vi) A fire department that serves a National Aeronautics and Space Administration installation and that adheres to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(vii) A fire department that provides fire protection to a commercial airport regulated by the Federal Aviation Administration (FAA) under Part 139 (commencing with Section 139.1) of Subchapter G of Chapter 1 of Title 14 of the Federal Code of Regulations whose firefighters are trained and certified by the State Fire Marshal as meeting the standards of Fire Control 5 and Section 139.319 of Title 14 of the Federal Code of Regulations.

(viii) Fire and rescue services coordinators who work for the Office of Emergency Services. For purposes of this clause, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(C) A covered worker who does not satisfy either of the criteria in subparagraph (A) or (B) is entitled to an amount of COVID-19 supplemental paid sick leave as follows:

(i) If the covered worker has a normal weekly schedule, the total number of hours the covered worker is normally scheduled to work for the hiring entity over two weeks.

(ii) If the covered worker works a variable number of hours, 14 times the average number of hours the covered worker worked each day for the hiring entity in the six months preceding the date the covered worker took COVID-19 supplemental paid sick leave. If the covered worker has worked for the hiring entity over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the covered worker has worked for the hiring entity.

(iii) If the covered worker works a variable number of hours and has worked for the hiring entity over a period of 14 days or fewer, the total number of hours the covered worker has worked for that hiring entity.

(D) The total number of hours of COVID-19 supplemental paid sick leave to which a covered worker is entitled pursuant to subparagraph (A), (B), or (C) shall be in addition to any paid sick leave that may be available to the covered worker under Section 246.

(E) A covered worker may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the covered worker is entitled pursuant to subparagraph (A), (B), or (C). The hiring entity shall make COVID-19 supplemental paid sick leave available for immediate use by the covered worker, upon the oral or written request of the worker to the hiring entity.

(F) A hiring entity is not required to provide a covered worker more than the total number of hours of COVID-19 supplemental paid sick leave to which the covered worker is entitled pursuant to subparagraph (A), (B), or (C).

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the highest of the following:

(i) The covered worker's regular rate of pay for the covered worker's last pay period, including pursuant to any collective bargaining agreement that applies.

(ii) The state minimum wage.

(iii) The local minimum wage to which the covered worker is entitled.

(B) Notwithstanding subparagraph (A), a covered worker who is entitled to an amount of COVID-19 supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be compensated for each hour

of COVID-19 supplemental paid sick leave at the regular rate of pay to which the worker would be entitled as if the worker had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

(C) Notwithstanding subparagraph (A) or (B), a hiring entity shall not be required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to a covered worker for COVID-19 supplemental paid sick leave taken by the worker.

(4) A hiring entity shall not require a covered worker to use any other paid or unpaid leave, paid time off, or vacation time provided by the hiring entity to the covered worker before the covered worker uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a hiring entity already provides a covered worker with a supplemental benefit, such as supplemental paid leave, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that would compensate the covered worker in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered worker is entitled as set forth under paragraph (3) of subdivision (b), then the hiring entity may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 supplemental paid sick leave that the hiring entity is required to provide to the covered worker under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental paid benefit or leave that may be counted does not include paid sick leave to which the covered worker is entitled under Section 246, but may include paid leave already provided by the hiring entity pursuant to Executive Order N-51-20 or Section 248, or supplemental paid leave provided pursuant to federal or local law for the same reasons set forth in paragraph (1) of subdivision (b). Additionally, if a hiring entity already provided supplemental paid leave between March 4, 2020, and the effective date of this section for the reasons listed in paragraph (1) of subdivision (b) but did not compensate the covered worker in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered worker is entitled as set forth under paragraph (3) of subdivision (b), the employer may retroactively provide supplemental pay to the covered worker to satisfy the compensation requirements under paragraph (3) of subdivision (b), in which case those hours may count towards the total number of hours of COVID-19 supplemental paid sick leave required under paragraph (2) of subdivision (b).

(d) (1) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of such enforcement and to implement COVID-19 supplemental paid sick leave, this section shall apply as follows:

(A) The Labor Commissioner shall enforce this section as if COVID-19 supplemental paid sick leave constitutes "paid sick days," "paid sick leave," or "sick leave" under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5. However, the requirement in subdivision (i) of Section 246 is not enforceable until the next full pay period following the date of enactment of this section.

(B) Section 249 applies to COVID-19 supplemental paid sick leave.

(C) By seven days after the effective date of this section, the Labor Commissioner shall make publicly available a model notice for purposes of Section 247. Only for purposes of COVID-19 supplemental paid sick leave, if a hiring entity's covered workers do not frequent a workplace, the hiring entity may satisfy the notice requirement of subdivision (a) of Section 247 by disseminating notice through electronic means, such as by electronic mail.

(2) For purposes of sections of this code cited in subparagraphs (A) to (C), inclusive, of paragraph (1), in construing this section all covered workers shall be considered employees and any hiring entity shall be considered an employer.

(e) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall take effect not later than 10 days after the date of enactment of this section.

(f) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall expire on December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), whichever is later, except that a covered worker taking COVID-19 supplemental paid sick leave at the time of the expiration of this

section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which that covered worker otherwise would have been entitled under this section.

**SEC. 5.** Section 248.5 of the Labor Code is amended to read:

**248.5.** (a) The Labor Commissioner shall enforce this article, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing through the procedures set forth in Sections 98, 98.3, 98.7, 98.74, or 1197.1, including by issuance of a citation against an employer who violates this article, and by filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as appropriate.

(b) (1) If the Labor Commissioner, in any administrative proceeding under subdivision (a), determines that a violation of this article has occurred, they may order any appropriate relief, including reinstatement, backpay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee or other person whose rights under this article were violated.

(2) If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.

(3) If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars (\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

(c) Where prompt compliance by an employer is not forthcoming, the Labor Commissioner may take any appropriate enforcement action to secure compliance, including the filing of a civil action. In compensation to the state for the costs of investigating and remedying the violation, the commissioner may order the violating employer to pay to the state a sum of not more than fifty dollars (\$50) for each day or portion of a day a violation occurs or continues for each employee or other person whose rights under this article were violated.

(d) An employee or other person may report to the Labor Commissioner a suspected violation of this article. The commissioner shall encourage reporting pursuant to this subdivision by keeping confidential, to the maximum extent permitted by applicable law, the name and other identifying information of the employee or person reporting the violation. However, the commissioner may disclose that person's name and identifying information as necessary to enforce this article or for other appropriate purposes, upon the authorization of that person.

(e) The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of fifty dollars (\$50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars (\$250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney's fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs.

(f) In an administrative or civil action brought under this article, the Labor Commissioner or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

(g) The remedies, penalties, and procedures provided under this article are cumulative.

(h) An employer shall not be assessed any penalty or liquidated damages under this article due to an isolated and unintentional payroll error or written notice error that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave. In reviewing for compliance with this section, the factfinder may

consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

**SEC. 6.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**SEC. 7.** The sum of \$100,000 is hereby appropriated from the Labor and Workforce Development Fund to the Labor Commissioner for staffing resources to implement and enforce the provisions related to the COVID-19 supplemental paid sick leave and COVID-19 food sector supplemental paid sick leave.

**SEC. 8.** This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

**SEC. 9.** Section 1 of this act shall become operative only if Senate Bill 1383 of the 2019–20 Regular Session is enacted and takes effect on or before January 1, 2021.