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**OFFICE OF THE LABOR COMMISSIONER
GUIDANCE ON SENATE BILL 4
32nd SPECIAL SESSION of the NEVADA LEGISLATURE (2020)
“REVISES PROVISIONS RELATING TO PUBLIC HEALTH”
SECTION 13 – PAID TIME OFF REQUIREMENTS**

Effective August 11, 2020

PAID TIME OFF FOR COVID-19 EXPOSURE, SYMPTOMS, & TESTING

Senate Bill (SB) 4 was passed during the 32nd Special Session of the Nevada Legislature (2020). Section 13 of SB 4 requires a public accommodation facility to establish, implement and maintain a written SARSCoV-2 response plan that provides testing and time off for employees who have been exposed to SARS-CoV-2 or are experiencing the symptoms of COVID-19.

SB 4, section 13, subsection (1), paragraphs (f) and (g) provide that each employee who notifies his or her employer that he or she is experiencing symptoms of COVID-19, must undergo testing for SARS-CoV-2 and must not return to work while awaiting results. Employees are to be provided no more than 3 days of paid time off to await testing and testing results. The 3 days paid time off can be exceeded if delays in testing or receiving results occur. If additional testing is required by the employer, the employer should provide additional paid time off for that. If the employee needs to have multiple tests due to reasons other than close contact that occurred at their workplace, the employee will need to coordinate that leave with the employer and may need to utilize other paid leave or other options, if available.

PAID TIME OFF FOR A POSITIVE COVID-19 DIAGNOSIS

SB 4, section 13, subsection, (1), paragraph (h) requires that each employee who tests positive for SARS-CoV-2 or is otherwise diagnosed with COVID-19 and is working or has been recalled to work at the time of the result or diagnosis must be allowed to take at least 14 days off, at least 10 of which must be paid time off. These time periods can be increased or decreased upon approval from the Director of the Department of Health and Human Services. (See section 13, subsection 3, of SB 4). If the employee requires additional leave beyond the 14 days off, at least 10 of which must be paid time off, the employee will need to coordinate that leave with the employer and may need to utilize paid leave or other options <https://www.leg.state.nv.us/App/NELIS/REL/32nd2020Special/Bill/7156/Overview>

ELIGIBILITY FOR PAID TIME OFF PURSUANT TO SENATE BILL (SB) 4

Question #1: Are existing employees eligible for paid time off?

Answer: Yes. Independent contractors and/or contractors who are not employees would not be eligible but could be if they were deemed to be an employee.

Question #2: Are new employees eligible for paid time off?

Answer: Yes. There are no exemptions to the paid time off provisions relating to COVID-19 testing, diagnosis, and/or leave in Senate Bill 4.

Question #3: Are part-time employees eligible for paid time off?

Answer: Yes. There are no provisions in SB 4 excluding part time employees from the testing, diagnosis, and/or paid time off requirements in SB 4.

WHAT TYPE OF PAID TIME OFF SHOULD BE PROVIDED – STATE OR FEDERAL?

SB 4, section 13, subsection 4, paragraphs (a) and (b): For the purposes of this section, paid time off must be calculated at the base rate of pay for the employee.

Paid time off taken pursuant to this section: (a) Must not be deducted from paid time off provided to the employee pursuant to Nevada Revised Statutes (NRS) 608.0197 or a policy or contract of the public accommodation facility. (b) May be deducted from paid sick leave provided pursuant to section 5102(a)(1)-(3) of the Families First Coronavirus Response Act (FFCRA), P.L. 116-127.

NRS section 608.0197 codified the paid leave provisions of Senate Bill 312 passed during the 80th Regular Session of the Nevada Legislature (2019), which is state law.

Because section 13, subsection 4, specifically excludes deducting State paid leave/paid time off, employers may deduct paid time off from federal paid sick leave based on the FFCRA.

WHAT IS THE BASE RATE OF PAY?

Under Nevada law, there is no definition of “base rate of pay.”

NRS section 608.012 defines wages under Nevada law as follows:

NRS 608.012 “Wages” defined “Wages” means:

1. The amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time; and
2. Commissions owed the employee, but excludes any bonus or arrangement to share profits.

Senate Bill 4 specifically states that the paid time off required under the bill may be deducted from the FFCRA and not State paid time off (NRS 608.0197).

Therefore, the Labor Commissioner is recommending that employers follow federal law and the guidance from the United States Department of Labor when calculating the rate of pay and/or base rate of pay for the paid time off taken under SB 4. Under the FFCRA, the rate of pay for time off provided and/or taken is referred to as the “regular rate of pay.”

It is recommended that employers use the following information from the United States Department of Labor and their guidance on the FFCRA.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

WHAT IS THE REGULAR RATE OF PAY UNDER THE FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your **regular rate** over a period of up to six months prior to the date on which you take leave.^[2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the Fair Labor Standards Act (FLSA).

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

Please also see the bulletin/link concerning the regular rate of pay under the FLSA.
<https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate>

PART-TIME EMPLOYEES – HOW TO CALCULATE RATE?

The United States Department of Labor guidance on the FFCRA states: "A part- time employee is eligible for the number of hours of leave the employee works on average over a two-week period."

CAN MORE PAID TIME OFF/HIGHER PAY FOR TIME OFF BE PROVIDED?

Yes. An employer can offer paid time off and/or pay for paid time off that exceeds the requirements of SB 4 through a policy, procedure, contract, agreement, or collective bargaining agreement.