



DANNIS WOLIVER KELLEY

Attorneys at Law

COVID-19 Advisory



Update: Supplemental Paid Sick Leave Under Senate Bill 114

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SB 114: California's 2022 COVID-19 Supplemental Paid Sick Leave Law

The following Advisory provides an overview of Senate Bill 114 ([SB 114](#)), California's 2022 COVID-19 supplemental paid sick leave law, and frequently asked questions (FAQs) regarding implementation of SB 114.

1. What is SB 114?

Under the prior state law of Senate Bill 95 (SB 95), covered employees who were unable to work or telework due to COVID-19-related reasons were entitled to 2021 COVID-19 Supplemental Paid Sick Leave (2021 SPSL) from January 1, 2021, through September 30, 2021. In response to the expiration of SB 95 and the ongoing challenges of the COVID-19 pandemic, California enacted SB 114, which provides 2022 COVID-19 Supplemental Paid Sick Leave (2022 SPSL) to covered employees in 2022, which includes employees of public entities.

2. When is SB 114 effective?

SB 114 went into effect on February 19, 2022, is retroactive to January 1, 2022, and expires on September 30, 2022. SB 114 creates new Labor Code section 248.6.

3. Which employers are subject to SB 114?

SB 114 applies to all employers, including public entities, with 26 or more employees.

4. What are the reasons covered employees can take 2022 SPSL?

SB 114 provides for two separate banks of 2022 SPSL, each bank of up to 40 hours.

The first bank of 2022 SPSL, up to 40 hours, is available to employees when they cannot work or telework for one of the following reasons:

- Caring for Yourself
 - The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance from the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer who has jurisdiction over the workplace.
 - The employee has been advised by a healthcare provider to isolate or quarantine due to COVID-19.
 - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Caring for a Family Member
 - The employee is caring for a family member who is subject to a quarantine or isolation period related to COVID-19 or has been advised by a healthcare provider to isolate or quarantine due to COVID-19.
 - Like SB 95, "family member" is defined (under Labor Code section 245.5) to include the employee's child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.

- “Child” is defined (under Labor Code section 245.5) to include a biological, adopted, or foster child, a step-child, legal ward, or child to whom the employee stands in loco parentis.
- “Parent” is defined to include a biological, adoptive, or foster parent, step-parent, or legal guardian of the employee or the employee’s spouse or registered domestic partner or person who stood in loco parentis when the employee was a minor child.
- o The employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.
 - “Closed or otherwise unavailable” means that a child’s classroom in school or place of care is closed on or after January 1, 2022, due to a concern that a person who had been present on the school or daycare premises was exposed to, or had contracted, COVID-19, and therefore making the care unavailable due to COVID-19 on the premises.
- Vaccine-Related
 - o The employee is attending a COVID-19 vaccine or booster appointment for themselves or a qualifying family member.
 - o The employee or a qualifying family member is experiencing symptoms related to the COVID-19 vaccine or booster that prevent the employee from being able to work or telework.
 - o An employer may limit an employee to 24 hours or 3 days of 2022 SPSL for each vaccination or booster appointment of the employee or family member, and any consequent side effects, unless a health care provider verifies that more recovery time is needed.

The second bank of 2022 SPSL, up to 40 hours, is available only if an employee or a qualifying family member for whom they are providing care tests positive for COVID-19.

5. How many 2022 SPSL hours are covered employees entitled to?

Full-time employees (e.g., work 40 hours per week) are entitled to up to 80 hours of leave, comprised of 40 hours of 2022 SPSL for caring for themselves, caring for their family member, or vaccine-related reasons, and an additional 40 hours of 2022 SPSL if the covered employee or qualifying family member tests positive for COVID-19.

Part-time employees are entitled to 2022 SPSL hours for each bank of leave according to the following calculations:

- If the part-time employee works a normal schedule, the part-time employee is entitled to the number of hours the part-time employee is normally scheduled to work over one week.
- If the part-time employee works a variable schedule and has worked for the employer over a period of more than seven days, the part-time employee is entitled to seven times the average number of hours the part-time employee worked each day for the employer in the six months preceding the date the employee took 2022 SPSL. If the part-time employee has worked for the employer for fewer than six months, the calculation is done over the entire period the part-time employee worked for the employer.
- If the part-time employee works a variable schedule and has worked for the employer over a period of seven days or fewer, the part-time employee is entitled to the total number of hours they worked for the employer.

For an illustration on how to calculate a part-time employee’s 2022 SPSL leave entitlement, please see the California Department of Industrial Relations’ (DIR) 2022 SPSL FAQs at [DIR 2022 SPSL FAQs](#) .

6. Does a covered employee have to exhaust the first bank of 2022 SPSL for any qualifying reason before using the second bank reserved for when the employee or family member tests positive for COVID-19?

No, the two banks do not need to be used consecutively, and exhaustion of one bank is not required before the employee uses the other bank.

7. How does a covered employee request 2022 SPSL leave from the employer?

The covered employee may make either an oral or written request for 2022 SPSL leave to their employer, and upon such request, the employer shall make such leave available immediately to the employee for use. The covered employee determines how many hours of 2022 SPSL they will use, up to their maximum entitlement.

8. Can a covered employee request “retroactive” 2022 SPSL for leave taken for 2022 SPSL reasons between January 1, 2022 and February 19, 2022?

Yes, if the covered employee took leave during this time period for one of the 2022 SPSL qualifying reasons and was not paid for this leave by the employer in the amount required by 2022 SPSL, then the covered employee has the right to request that the employer make a “retroactive” payment equal to the amount required.

Employers are required to make “retroactive” 2022 SPSL payments to covered employees only under the following circumstances:

- The employee makes an oral or written request to the employer to receive such “retroactive” 2022 SPSL payment.
- The employee’s request must be made on or after February 19, 2022.
- The leave taken between January 1, 2022 and February 19, 2022 must be for a qualifying reason under 2022 SPSL.

Employers must do the following after receiving an employee’s valid “retroactive” payment request:

- The employer has until the payday for the next full pay period to pay the “retroactive” 2022 SPSL leave to the employee.
- On that payday, the employer must provide accurate notice to the employee on their wage statement regarding how many 2022 SPSL hours the employee has used through that pay period.

9. How much compensation for 2022 SPSL will covered employees receive?

Non-exempt covered employees are entitled to be compensated for each hour of 2022 SPSL at a rate equal to one of the following:

- Employee’s regular rate of pay for the workweek in which the 2022 SPSL is taken.
- Rate calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total non-overtime hours worked in the full pay periods of the prior 90 days of employment.

Exempt covered employees are entitled to 2022 SPSL compensation in the same manner that the employer calculates wages for other forms of paid leave.

2022 SPSL compensation shall not exceed \$511 per day and \$5,110 in total, unless the federal government enacts subsequent legislation that increases these caps. Covered employees who earn more than these caps may choose to utilize other paid leave they have available in order to fully compensate them for leave taken.

10. Can the employer request documentation from the covered employee as a condition of providing 2022 SPSL?

Yes, an employer may request documentation as a condition of providing 2022 SPSL in the following situations:

- If the employee or a qualifying family member tests positive for COVID-19 and the employee requests to use their 2022 SPSL bank that is only available after a positive test, the employer may require that the employee provide documentation of the employee's or qualifying family member's positive test results before paying the employee for the 2022 SPSL. If the employee fails to provide the test results per the employer's request, then the employer may deny pay for the leave.
- Similarly, if the employee is requesting retroactive pay from their 2022 SPSL bank that is only available after a positive test, the employer may request documentation of the employee's or qualifying family member's positive tests results before processing the retroactive pay. Such documentation could include, among other things, a medical record of the test results, an email or text from the testing company with the results, a picture of the test results, or a contemporaneous text or email from the employee to the employer stating that the employee or a qualifying family member tested positive for COVID-19.
- If an employee uses more than 3 days or 24 hours for a single vaccine or booster appointment and recovery from any related side-effects for themselves or a qualifying family member, an employer may request medical certification that the employee or family member required more time to recover from those side effects. If the employee does not provide such certification per the employer's request, the employer may limit the leave for these reasons to 3 days or 24 hours.

11. Other than the specified circumstances above, can an employer require certification from a health care provider before allowing a covered employee to take the leave when the request is for a qualifying reason?

In general, no. A covered employee is entitled to take 2022 SPSL immediately upon their oral or written request to the employer, and such leave is not conditioned on medical certification or any other documentation (other than the specified circumstances described above). Although an employer cannot deny 2022 SPSL to an employee solely for lack of documentation, it may however be reasonable in certain circumstances to ask for documentation before paying the sick leave when the employer has other information indicating that the covered employee has not requested 2022 SPSL for a valid purpose. For example, if a covered employee informs an employer that the covered employee is subject to a local quarantine order or recommendation, has to stay home, and qualifies for 2022 SPSL, but the employer subsequently learns that the covered employee was out at a ballpark, the employer could reasonably request documentation from the employee before paying the 2022 SPSL.

12. Can the employer require an employee to get a COVID-19 test under the 2022 SPSL?

Yes, for an employee that tested positive for COVID-19, the employer may require the employee submit to a diagnostic test on or after the fifth day after the employee initially tested positive for COVID-19. Any test required by the employer must be made available at no cost to the employee, which includes ensuring the employee has a rapid test in hand or securing an appointment at a testing facility for the employee. If the employee fails to submit to such test required by the employer, or fails to provide the test results to the employer, the employer may deny pay for any leave taken after the time the employer provides the test.

13. Is a particular type of COVID-19 diagnostic test required in order to qualify for 2022 SPSL based on having a positive test result?

The law does not specify the type of test and does not place conditions on how the test is administered in order for the employee to qualify for 2022 SPSL. An employee or the qualified family member may take an over-the-counter rapid test (Antigen) or a test that is scheduled at a testing facility.

14. Does the employer have to give notice to employees regarding 2022 SPSL?

Yes, the Labor Commissioner has issued a [model notice](#) regarding 2022 SPSL for posting by employers. If employees "do not frequent a worksite," the employer may satisfy the notice requirement by disseminating the notice to employees through electronic means.

15. Are employers required to inform employees of their 2022 SPSL leave balances?

Yes, 2022 SPSL is in addition to an employee's regular paid sick leave entitlement, and employers must provide employees with an itemized wage statement or separate writing that specifies how many 2022 SPSL hours have been used through that pay period (please note that 2022 SPSL differs from 2021 SPSL in that the paystub now must list what hours have been used instead of what hours are available to use). For example, if no 2022 SPSL hours have been used, then the paystub or other writing issued at the time wages are paid must indicate 0 for that pay period. Moreover, 2022 SPSL must be itemized separately from other paid sick leave on the employee's wage statement or separate writing. Records of accrued and used 2022 SPSL must be maintained for three years and must be made available to the employee or Labor Commissioner upon request.

16. Can an employer require a covered employee to first use their own accrued paid time off before the employee uses 2022 SPSL?

No, an employer shall not require an employee to use any other paid or unpaid leave, paid time off, or vacation time before the employee uses 2022 SPSL or in lieu of 2022 SPSL.

17. Is 2022 SPSL separate from COVID-19-related paid sick leave previously provided under federal or California laws?

Yes, mandatory COVID-19-related paid sick leave under the federal Families First Coronavirus Response Act (FFCRA) and California's 2020 SPSL and 2021 SPSL laws have all expired. Regardless of whether covered employees took COVID-19-related leave under prior laws, the new 2022 SPSL allows covered employees to take up to 40 hours for qualifying reasons under the first bank, and an additional 40 hours for qualifying reasons under the second bank, during the period of January 1, 2022 through September 30, 2022.

18. What if an employer voluntarily offered employees COVID-19-related sick leave during the period of January 1, 2022 through February 19, 2022?

An employer may receive a credit towards the requirements of 2022 SPSL as long as the payments meet the requirements of the law. For an employer to receive credit for those sick leave hours the employer voluntarily paid between January 1, 2022 and February 19, 2022, the following must apply:

- The leave taken by the covered employee and paid by the employer must have been for one of the qualifying reasons under 2022 SPSL;
- To pay for this other supplemental benefit, the employer did not require the covered employee to use any other paid leave or paid time off available to the employee under a policy that is not specific to COVID-19, or vacation time; and
- The employer paid for the leave taken at a rate equal to or greater than what is required under 2022 SPSL. If the employer paid for the leave taken at a lesser rate, then the employer may voluntarily make a retroactive payment to make up the difference, or must make the payment if a covered employee makes a written or oral request for it on or after February 19, 2022.

19. Can an employer count the COVID-19-related sick leave provided pursuant to a local paid sick leave ordinance toward 2022 SPSL under California law?

Yes, for example, if an employer provides a full-time covered employee 40 hours of COVID-19-related supplemental paid sick leave pursuant to a local ordinance during the period of January 1, 2022 and after, those 40 hours would count toward the employer's obligations under the 2022 SPSL law, so long as the leave provided is for a qualifying reason under 2022 SPSL and is at least at the same rate of pay as the 2022 SPSL requires.

20. If a covered employee used another type of leave for a qualifying COVID-19-related reason under 2022 SPSL, can the covered worker get that leave credited back and the leave under 2022 SPSL leave bank debited?

Yes, if an employee took leave of absence for a COVID-19-related reason on or after January 1, 2022, and the employee was fully paid for the leave from another leave bank that the employer provides (e.g., accrued sick leave), the employee may request that their leave bank be restored and the corresponding deduction be made from the employee's 2022 SPSL leave bank. The decision to restore used time is the employee's decision.

21. What is the relationship between “exclusion pay” under OSHA ETS and 2022 SPSL?

Under the OSHA Emergency Temporary Standards (OSHA ETS), if the employee is able and available to work, the employer must continue to provide the employee’s pay and benefits during the period of time an employee is excluded from work due to a workplace COVID-19 exposure (“exclusion pay”). An employer may require the employee to first exhaust paid sick leave benefits before providing “exclusion pay,” to the extent permitted by law, and may offset payments by the amount an employee receives in other benefit payments. Unlike the 2021 SPSL, under the new 2022 SPSL law, an employer may not require an employee to exhaust 2022 SPSL before satisfying any requirement to provide exclusion pay due to a workplace COVID-19 exposure under OSHA ETS.

22. Can employers require employees to use other paid sick leave (not 2022 SPSL) when they are excluded due to COVID-19 exposure in the workplace under the OSHA ETS?

Yes, employers that provide a paid leave policy that is separate and in addition to the paid sick leave policy required by Labor Code section 246 (e.g., paid sick leave of 3 or more days each year for employees who work at least 30 or more days with the same employer) may require their employees to use that separate sick leave as permitted by law during the period of exclusion. An employer, however, cannot require the employee to use the standard paid sick leave mandated under Labor Code section 246, even when there has been a workplace exposure and the employer is required to exclude employees under the OSHA ETS. For more information regarding exclusion pay under the OSHA ETS, please see [OSHA ETS Exclusion Pay FAQs](#).