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California Requires COVID-19 Supplemental Paid Sick Leave In 2022

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By: Naureen Amjad, Riebana E. Sachs

Practices: Employment, Labor & Benefits

EXECUTIVE SUMMARY

On February 9, 2022, Governor Gavin Newsom signed into law, Senate Bill 114, the 2022 California COVID-19 Supplemental Paid Sick Leave law (the “2022 CSPSL”). The 2022 CSPSL went into effect on February 19, 2022 and requires employers to provide supplemental paid sick leave to California employees for a variety of COVID-19 related reasons. The new law applies retroactively from January 1, 2022 and will expire on September 30, 2022.

The 2022 CSPSL replaces the expired COVID-19 related paid sick leave laws that California employers were required to abide by under the expired federal Families First Coronavirus Response Act (“FFCRA”) and California’s COVID-19 Supplemental Paid Sick leave laws from 2020 and 2021. The 2022 CSPSL is significantly different from its predecessors such that employers will not be able to simply reinstate their past policies on COVID-19 paid sick leave. Additionally, the 2022 CSPSL does not pre-empt local ordinances such as those applicable to Los Angeles, Long Beach and Oakland, so employers should remain mindful of compliance obligations under such local ordinances. Under the 2022 CSPSL, covered employees may take up to 80 hours of supplemental paid time off, regardless of whether they took leave under the previous laws, upon an oral or written request to their employer.

WHO IS COVERED?

Employers in the public and private sector with 26 or more employees, including those with collective bargaining agreements.

Employees who are unable to work or telework for an employer due to a covered reason. Part-time and full-time employees are covered, but independent contractors are not.

WHAT IS COVERED?

Covered employers must offer up to 80 hours of supplemental paid time off. The paid time off is divided into the following two, independent 40-hour banks:

First Bank: Up to 40 Hours for COVID-19 Related Reasons

These covered reasons track the previous versions of the California COVID-19 Supplemental Paid Sick leave laws, including:

- The covered employee is subject to a quarantine or isolation period related to COVID-19.
- The covered employee has been advised by a health care provider to isolate or quarantine due to COVID-19 or is caring for a family member who has been advised by a health care provider to isolate or quarantine.
- The covered employee is attending an appointment for themselves or a family member to receive a vaccine or a vaccine booster for protection against COVID-19, subject to limitations, discussed below.
- The covered employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or booster that prevent the employee from being able to work or telework. However, the employer may limit the supplemental sick leave to 3 days or 24 hours for vaccine or booster side effects, unless the employee provides verification from a health care provider that the covered employee or their family member is continuing to experience symptoms related to a COVID-19 vaccine or booster. In addition, the 3-day or 24-hour limitation includes the time used to get the vaccine or a booster and also applies to each vaccine or booster that a family member receives.
- The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The covered 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.

Second Bank: Up to 40 Hours if an Employee or a Family Member Tests Positive for COVID-19

If a covered employee tests positive or is caring for a family member who tests positive for COVID-19, the covered employee qualifies for an additional 40 hours of paid sick leave. Employees are not required to exhaust the first 40-hour bank of paid sick leave and may be entitled to paid leave under this separate bank when they do not otherwise qualify for leave under the first bank. Covered employers may require proof of a positive COVID-19 test from employees requesting supplemental paid sick leave from this 40-hour bank. If an employee refuses to provide the test results, employers may deny supplemental paid sick leave from this second 40-hour bank. The Frequently Asked Questions (“FAQs”) issued by the Labor Commissioner’s Office suggest that this documentation could include “a medical record of the test result, an e-mail or text from the testing company with the results, a picture of the test result, or a contemporaneous text or e-mail from the employee to the employer stating that the employee or a qualifying family member tested positive for COVID-19.”

WHAT ELSE SHOULD EMPLOYERS CONSIDER?

- Covered employers may not require eligible employees to exhaust other available leave, including regular paid sick leave, vacation days, or other types of PTO, prior to or concurrent with their use of the supplemental paid sick leave.
- Part-time employees receive a pro-rated amount of supplemental paid sick leave, based on their regular schedules.

- Employees with variable schedules receive an amount of supplemental paid sick leave that is calculated based on their average hours worked over a six-month lookback period (which may vary depending on the length of employment).
- Covered employers must list the amount of supplemental paid leave used on employees' wage statements. This information must be detailed separately from the employees' regular sick leave.
- Payment is at the employee's regular or usual rate of pay, although limited to \$511 per day and \$5,110 in total.
- Employees may be eligible to request a retroactive payment if they took leave between January 1, 2022 and February 19, 2022 and that leave was either unpaid or at a rate less than the employee's regular or usual rate of pay.
- Although employers may request documentation under certain specific circumstances, covered employers generally may not deny an employee supplemental paid sick leave based solely on a lack of certification from a health care provider.
- Covered employers may receive a credit toward the requirements of the new 2022 CSPSL under specific circumstances. Under the law, if an employer pays an employee another benefit for leave taken on or after January 1, 2022 that is payable for the law's covered reasons and compensated employees in an amount equal to or greater than the amount of pay the law requires, an employer may count those hours toward the number of 2022 CSPSL hours that it must provide an employee. It is important to note that this must be a supplemental benefit, such that employers cannot count paid sick leave employees have used under California's Healthy Workplaces, Healthy Families Act of 2014 (CHWHFA), any pre-COVID-19 paid sick and safe time law, or the 2021 California Paid Sick Leave Law toward their 2022 CSPSL requirements. However, employers can use as an offset any paid leave they provided pursuant to a federal or local law in effect on or after January 1, 2022 if such leave was for any of the same covered reasons as under 2022 CSPSL.
- All covered employers are required to conspicuously display a poster regarding the 2022 CSPSL. The poster can be found here: [2022 COVID-19 Supplemental Paid Sick Leave Effective February 19, 2022 \(ca.gov\)](https://www.dir.ca.gov/2022_COVID-19_Supplemental_Paid_Sick_Leave_Effective_February_19_2022.htm).

If you have any questions about this article or how it impacts your workplace, please contact Naureen Amjad, Riebana E. Sachs or any member of the Employment, Labor and Benefits Group.