

California Enacts COVID-19 Supplemental Paid Sick Leave For 2022

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On February 9, 2022, California Governor Gavin Newsom signed into law Senate Bill 114, which reestablishes the state's COVID-19 supplemental paid sick leave requirements. Employers will not be able to simply dust off their 2021 policies and reimplement them, however, because the 2022 law contains some important changes from prior laws.

In September 2020, California signed into [law](#) the original statewide requirement for private employers with 500 or more employees to provide COVID-19 supplemental paid sick leave. After California's original supplemental paid sick leave law expired, the state passed Senate Bill 95, a new COVID-19 paid sick leave requirement applying to private employers with 25 or more employees (previously covered in [this](#) post).

SB 95 expired on September 30, 2021, leaving only a patchwork of local supplemental paid sick leave laws in Los Angeles, Long Beach, and Oakland. This left California without a statewide COVID-19 supplemental paid sick leave requirement until now.

SB 114, the new 2022 COVID Supplemental Sick Pay Law, applies retroactively to January 1, 2022 and is to remain in effect until September 30, 2022.

SB 114 adds sections 248.6 and 248.7 to the California Labor Code (available [here](#)), and applies to employers with 26 or more employees. It requires that covered employers provide their employees with up to 80 hours of COVID-19 supplemental paid sick leave upon the oral or written request of the employee if certain specified criteria are met. The law breaks up those hours into two categories of up to 40 hours each.

The first category gives workers (and teleworkers) up to 40 hours of paid leave to quarantine or isolate, attend vaccine appointments for the worker or a family member or recover from vaccine-related symptoms, seek medical diagnosis for COVID-19 symptoms, or care for a child in the case of the closure of a school or place of care due to COVID-19. Paid sick leave for the vaccine-related reasons may be limited to up to 3 days or 24 hours of paid leave per vaccination unless the employee provides verification from a healthcare provider that more time is necessary.

The second category of paid leave can only be used to recover from a positive case of COVID-19 or to care for a family member who tests positive. Under this category, employers are allowed to require workers to submit proof of their own positive COVID-19 test or one from the family member in order to qualify. The employer also may require the employee to be tested again 5 days after the original test. The employer must cover the cost of such a test.

Employees may use the two categories of hours in any order and need not exhaust one category before utilizing the other and it is up to the employee whether she wishes to use supplemental COVID sick pay for the absence.

In terms of the amount of leave to which an employee is entitled, full-time employees must be provided 40 hours of leave for each category of leave.

In the case of employees with a normal weekly schedule of less than 40 hours, those employees are entitled to the total number of hours they are usually scheduled to work in a week for each of the two categories of COVID-19 leave. In the case of employees who do not have a regular weekly schedule, they are entitled to seven times the average number of hours the covered employee worked each day for the employer in the six months preceding the date that the covered employee took COVID-19 supplemental paid sick leave for each of the two categories. Employees who have only worked for the employer for one week or less are entitled to the total number of hours they have worked for each category of leave.

If an employee took time off because of COVID-19 between January 1, 2022 and February 19, 2022, the employee may make a written or oral request for retroactive paid supplemental sick leave, which the employer must pay no later than the next full pay period after the request was made.

Certain written notice requirements also are imposed on the employer under the new law. Employers must provide notice either on the employee's wage statement or through other writing concerning the supplemental paid sick leave. However, unlike the 2021 law which required the employer to show the amount of leave available, the 2022 law requires that the employer must provide notice of the amount of COVID-19 supplemental paid sick leave that the employee has *used*. If an employee has not used any supplemental paid sick leave, the employer must still provide written notice to the employee that zero hours have been used.

The total amount of supplemental paid sick leave that an employer must provide is capped at \$511 per day or \$5,110 total.

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