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TO: Business, Payroll, and Personnel Administrators
Los Angeles County School and Community College Districts
Charter Schools and Other Local Educational Agencies

FROM: Raymond Bribiesca, Payroll Systems Coordinator
District Personnel Information Services
Division of School Financial Services

SUBJECT: HRS/HCM Updates COVID-19 Supplemental Paid Sick Leave (SB 114)

On February 9, 2022, Governor Gavin Newsom signed SB 114 requiring most employers in California to provide up to 80 hours of Supplemental Paid Sick Leave (SPSL) to eligible employees. Part-time staff are entitled to the number of hours they would usually work each week. Employees will be paid at their regular rate while taking SPSL, capped at \$511 per day (or \$5,110 total). SPSL is available retroactively to January 1, 2022 and will expire on September 30, 2022.

Updates have been made to HRS and HCM in order to track wages paid relating to the new leave category. Updates are as follows:

Human Resource System (HRS) Updates

Earn code "CSP" can be used to track wages paid to employees utilizing the new leave. Unfortunately, we don't have a mechanism in HRS to add the new leave balances to the employee's pay stub. Districts will need to track and provide that information to staff on a separate statement.

Human Capital Management (HCM) Updates

The SPSLU (usage) and SPSLJ (adjustment) from Supplemental Paid Sick Leave (SPSL) category, short description and long description have been updated to: "CA Supplemental Paid Sick Leave". Each bucket has a maximum allotment of 80 hours for the two leaves. Since the recording of SB 114 will be manual, descriptive notes/comments will be helpful when the employee is taking the time off because of Covid-19 (first bucket), or for vaccination (second bucket). SPSL balances will be available on the employee's pay stub.

Should you have questions regarding this bulletin, please contact the SFS Payroll Unit at SFS_Payroll_Manager@lacoe.edu.

For more information on SB 114, a link to the Bill is provided. and attached to this bulletin is 2022 SSL FAQs.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB114

Approved:
Yumeka Seabrooks, Project Management Officer
Division of School Financial Services

RB:sm

SFS-A37-2021-2022



California Department of Industrial Relations

2022 SPSL FAQs

2022 COVID-19 Supplemental Paid Sick Leave provides covered employees up to 80 hours of COVID-19 related paid leave, with up to 40 of those hours for isolation & quarantine, receiving vaccines, and caring for a child whose school or place of care is closed and up to an additional 40 of those hours available only when an employee, or family member for whom the employee provides care, tests positive for COVID-19.

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General Questions

1. Which employers are covered by the new 2022 COVID-19 Supplemental Paid Sick Leave law?

All employers, public or private, with 26 or more employees are covered, including those with collective bargaining agreements.

2. Which employees are covered by this new law?

Covered employees are those who cannot work or telework due to the reasons listed below in FAQ 4. Under the 2022 COVID-19 Supplemental Paid Sick Leave law, covered employees are entitled to paid sick leave that is **in addition to** leave that was provided under previous laws which expired on September 30, 2021. See FAQ 35 for more information on these other laws (the federal Families First Coronavirus Response Act and the 2020 and 2021 COVID-19 Supplemental Paid Sick Leave laws).

3. Does COVID-19 Supplemental Paid Sick Leave apply to independent contractors?

Attachment to:
Info. Bul. No. 5500
SFS-A37-2021-2022

No. Similar to 2021 COVID-19 Supplemental Paid Sick Leave, 2022 COVID-19 Supplemental Paid Sick Leave does not apply to independent contractors. However, any worker who has been [misclassified as an independent contractor](#) but is in fact an employee, and otherwise qualifies under the new law, is entitled to 2022 COVID-19 Supplemental Paid Sick Leave.

Reasons for Taking Leave

4. What are the circumstances that allow a covered employee to take 2022 COVID-19 Supplemental Paid Sick Leave?

2022 COVID-19 Supplemental Paid Sick Leave provides for two separate banks of leave, each of up to 40 hours.

The first bank of COVID-19 Supplemental Paid Sick Leave, up to 40 hours, is available to covered employees unable to work or telework due to any one of the following reasons:

- **Caring for Yourself:** The covered employee is subject to a quarantine or isolation period related to COVID-19 (see note below), or has been advised by a healthcare provider to quarantine due to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- **Caring for a Family Member:** The covered employee is caring for a family member who is either subject to a quarantine or isolation period related to COVID-19 (see note below) or has been advised by a healthcare provider to quarantine due to COVID-19, or the employee is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises. See FAQ 6 for the definition of family member and child.
- **Vaccine-Related:** The covered employee or a qualifying family member is attending a vaccine appointment or cannot work or telework due to vaccine-related side effects.

NOTE: The quarantine or isolation period related to COVID-19 is the period defined by an order or guidance of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer with jurisdiction over the workplace.

The second bank of COVID-19 Supplemental Paid Sick Leave, up to 40 hours, is available only if an employee or a family member for whom they are providing care tested positive for COVID-19.

As detailed below in FAQs 15-16, covered employees can receive up to 40 hours of each type of leave, for a potential total of up to 80 hours.

5. What does it mean for a child's school or place of care to be closed or unavailable due to COVID-19 on the premises?

This means that a child's classroom in school or place of care was 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. This does not include caring for a child whose school or daycare was closed before January 1, 2022. If the school or daycare was closed on or after January 1, 2022, it must have been due to a closure, or partial closure, making the care unavailable due to COVID-19 on the premises.

6. How are "family member" and "child" defined under 2022 COVID-19 Supplemental Paid Sick Leave?

Like 2021 COVID-19 Supplemental Paid Sick Leave, a family member includes a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.

A child can include a biological, adopted, or foster child, a step-child, legal ward, or child to whom the employee stands in loco parentis.

A parent includes 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.

7. Is a covered employee eligible for 2022 COVID-19 Supplemental Paid Sick Leave if someone with whom the covered employee lives is exposed, experiences symptoms, or is diagnosed with COVID-19?

A covered employee is eligible for COVID-19 Supplemental Paid Sick Leave if the employee is caring for a family member whom a medical professional has recommended to stay home due to COVID-19; or caring for a family member who is subject to a COVID-19 related quarantine or isolation period as defined by an order or guidance of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer with jurisdiction over the family member's workplace; or if the employee themselves is subject to such an order due to COVID-19 exposure.

8. Does being subject to a general stay-at-home order mean that a covered employee is "subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace"?

No. The order or guidance must be specific to the covered employee's circumstances. A general stay-at-home order would not count. For example, guidance or an order of a local public health officer that directs individuals who live with someone who has COVID-19 to quarantine themselves would satisfy the eligibility requirement for taking 2022 COVID-19 Supplemental Paid Sick Leave.

9. How does a covered employee know if a quarantine or isolation period related to COVID-19 applies to their circumstance?

For general guidance on applicable isolation and quarantine periods, please see [CDPH](#). These are the guidelines that would apply to determine whether and for how long a family member would need to isolate or quarantine.

For guidance on when an employee may be required to isolate or quarantine from the workplace, please see the isolation and quarantine periods in the chart in the following link to [Division of Occupational Safety and Health \(Cal/OSHA\) FAQs on the Emergency Temporary Standards](#).

The guidance may be subject to change. Therefore, it is necessary to determine which isolation and quarantine periods were in effect during any period when leave is or was sought for one of the reasons identified in FAQ 4. At the time these FAQs were prepared, generally, all symptomatic individuals must isolate after exposure to COVID-19. If a covered employee was exposed but has no symptoms and has not tested positive, the quarantine period will depend on vaccination status.

In addition to these isolation and quarantine periods, an employee experiencing symptoms of COVID-19 and seeking a medical diagnosis would be entitled to leave.

Start Date and End Date

10. What time period does 2022 COVID-19 Supplemental Paid Sick Leave Cover?

January 1, 2022 through September 30, 2022. Although the law was signed on February 9, 2022, the requirement for an employer to provide 2022 COVID-19 Supplemental Paid Sick Leave does not start until February 19, 2022. Beginning on February 19, 2022 the requirement to provide 2022 COVID-19 Supplemental Paid Sick Leave is retroactive to January 1, 2022, which means that covered employees who took **qualifying leave between January 1, 2022 and February 19, 2022**, can request payment for that leave if it was not paid by the employer in the amount that is required under this law.

- FAQ 13 below describes how a covered employee may request this “retroactive” payment.
- FAQs 15-18 below describe how many hours of 2022 COVID-19 Supplemental Paid Sick Leave covered employees can take, and FAQ 30 describes how much they must be paid for taking this leave.

The requirement to provide 2022 COVID-19 Supplemental Paid Sick Leave will end on September 30, 2022. If the law expires while a covered employee is taking this leave, the employee can finish taking the amount

of 2022 COVID-19 Supplemental Paid Sick Leave they are entitled to receive.

11. When must an employer begin paying COVID-19 Supplemental Paid Sick Leave to covered employees?

Employers have a 10-day grace period after the signing of the law to begin providing 2022 COVID-19 Supplemental Paid Sick Leave. This means that employers are required to provide this leave beginning on February 19, 2022.

- Starting on February 19, 2022, when employers must begin providing 2022 COVID-19 Supplemental Paid Sick Leave, the requirement to provide this leave is retroactive to January 1, 2022. This means that covered employees who took **qualifying leave between January 1, 2022 and February 19, 2022**, can request payment for that leave if it was not paid by the employer in the amount that is required under this law. FAQ 13 below describes when an employer must provide this “retroactive” payment.
- FAQs 15-18 below describe how many hours of 2022 COVID-19 Supplemental Paid Sick Leave that a covered employee can take, and FAQ 30 describes how much an employer must pay the employee for taking this leave.

For 2022 COVID-19 Supplemental Paid Sick Leave taken by a covered employee **on or after February 19, 2022**, the employer must provide payment by the payday for the next regular payroll period after the sick leave was taken.

Requesting Leave from An Employer

12. When does an employer have to make the 2022 COVID-19 Supplemental Paid Sick Leave available to a covered employee?

Immediately upon the oral or written request of the covered employee to the employer. Payment may be conditioned upon proof in certain circumstances described in FAQs 14 and 19-20.

13. How does a covered employee request “retroactive” 2022 COVID-19 Supplemental Paid Sick Leave for leave taken between January 1, 2022 and February 19, 2022?

If the covered employee took leave between January 1, 2022 and February 19, 2022, for qualifying reasons under this new law (see FAQ 4), but was not paid for this leave in the amount required under this law (see FAQs 15-18, 30), then the covered employee has the right to ask the employer for a “retroactive” payment equal to the amount required.

The requirement to provide “retroactive” 2022 COVID-19 Supplemental Paid Sick Leave does not start until February 19, 2022. This “retroactive” payment is only required if the covered employee makes an oral or written request to be paid for leave that qualifies (as described above).

For example, if a covered employee had to take two hours off for a vaccine appointment on January 15, 2022, the employee can make an oral or written request to the employer to be paid for that time off in January, because it is a qualifying reason for taking 2022 COVID-19 Supplemental Paid Sick Leave. The oral or written request must be made on or after February 19, 2022. A request made before February 19 does not count. If an employee is unable to make the request themselves or has difficulty locating an employer to provide proper notice, they may contact the Labor Commissioner's Office, which may be able to provide assistance.

After the employee makes the request, the employer will have until the payday for the next full pay period to pay the "retroactive" 2022 COVID-19 Supplemental Paid Sick Leave. On that payday, the employer must also provide accurate notice on the itemized wage statement of how many 2022 COVID-19 Supplemental Paid Sick leave hours have been used by the covered employee.

14. Can an employer require documentation if an employee is requesting retroactive pay for the 2022 COVID-19 Supplemental Paid Sick Leave that is available only if the employee or qualifying family member was positive for COVID-19?

Yes, if the employee is requesting retroactive pay for leave that is available only if the employee or qualifying family member was positive for COVID-19, an employer may request documentation. This documentation could include, among other things, 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.

If retroactive payment is being sought from the hours that an employee may use for any other qualifying reason, please see **FAQs 19-20** below concerning requesting documentation under the statute in general.

Calculating an Employee's Hours of Leave

15. How much 2022 COVID-19 Supplemental Paid Sick Leave is a full-time covered employee entitled to receive?

A covered employee who is considered full-time or who worked or was scheduled to work an average of at least 40 hours per week in the two weeks before the leave is taken is entitled to up to 80 hours of leave, comprised of 40 hours of COVID-19 Supplemental Paid Sick Leave for any of the reasons stated above in FAQ 4 and an additional 40 hours if the covered employee or qualifying family member tests positive for COVID-19.

16. Do you have to exhaust the one week of COVID-19 paid sick leave that can be used for any qualifying reason before using the one week reserved for when an employee or qualifying family member tests positive for COVID-19?

No. The two weeks do not need to be consecutive, and exhaustion of one is not required before using another.

For example, a full-time covered employee can use 10 hours from the first bank to receive a COVID-19 vaccine booster shot and recover from symptoms, 40 hours from the second bank to care for a family member that tested positive for COVID-19, and then 30 hours from the first bank to care for a child whose daycare had closed due to COVID-19 on the premises

17. If I am an active firefighter, am I limited to 80 hours of 2022 COVID-19 Supplemental Paid Sick Leave?

No. Under this law, active firefighters can take as many hours as they were scheduled. The law limits the amount paid to the maximum of \$511 per day or \$5,110 in total.

18. How do you calculate the leave entitlement for a part-time covered employee who does not have a set schedule?

Below are the two methods to calculate the entitlement for part-time covered employees for each bank of leave.

- **Part-Time Covered Employees with Variable Schedules Who Have Worked For an Employer Over a Period of More Than 7 Days.**

For such a part-time covered employee who works variable hours, the covered employee may take seven times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took 2022 COVID-19 Supplemental Paid Sick Leave. If the part-time covered employee has worked for the employer for fewer than six months, this calculation would be done over the entire period that the covered employee has worked for the employer. If the variable schedule calculation results in an average work schedule of at least 40 hours per week, the variable-scheduled covered employee would be considered full time and entitled to 40 hours of leave because the laws require the employer to pay 40 hours of 2022 COVID-19 Supplemental Paid Sick Leave to a covered employee it properly considers full time, but does not require payment for more than 40 hours. Part-time covered employees are also entitled to the additional one week of paid leave under the circumstances described in FAQ 4.

In calculating the average number of hours worked by a part-time covered employee with a variable schedule over the past six months, the figure is determined based on the total number of days in the 6-month period, not just the number of days worked. Below is an

example using a 6-month period that contains a total of 182 days (26 weeks):

Total Number of Hours Worked During 6-Month Period	520 hours
Total Number of Days in 6-Month Period	182 days
Average Number of Hours Worked Each Day in 6-Month Period	$520 \text{ hours} \div 182 \text{ days} = 2.857 \text{ hours}$
2022 COVID-19 Supplemental Paid Sick Leave Entitlement	$2.857 \times 7 = 20 \text{ hours}$

- **Part-Time Covered Employees with Variable Schedules Who Have Worked For an Employer for a Period of 7 Days or Fewer.**
A covered employee who is newly hired (*i.e.*, hired 7 days before or less) and works variable hours will be entitled to the number of 2022 COVID-19 Supplemental Paid Sick Leave hours that they have worked in the preceding week.

Below is an example of the calculation where such a new covered employee has worked for a total of two days—one day for 1 hour and a second day for 6 hours over the past week:

Total Number of Hours Worked During the One-Week Period	7 hours
Total Number of Days in a One-Week Period	7 days
Average Number of Hours Worked Each Day in the One-Week Period	$7 \text{ hours} \div 7 \text{ days} = 1 \text{ hours}$
2022 COVID-19 Supplemental Paid Sick Leave Entitlement	$1 \text{ hours} \times 7 = 7 \text{ hours}$

Permissive Limits on Use and Verification

19. 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?

Generally, no. An employer may not deny a worker 2022 COVID-19 Supplemental Paid Sick Leave based solely on a lack of certification from a health care provider. A covered employee is entitled to take 2022 COVID-19 Supplemental Paid Sick Leave immediately upon the covered employee's oral or written request. The leave is not conditioned on medical certification.

Although an employer cannot deny 2022 COVID-19 Supplemental Paid Sick Leave solely for lack of a medical certification, it may 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 is not requesting 2022 COVID-19 Supplemental Paid Sick leave for a valid purpose. In any such claim, the reasonableness of the parties' actions will inform the outcome of the claim.

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 COVID-19 Supplemental Paid Sick Leave, but the employer subsequently learns that the covered employee was out at a ballpark, the employer could reasonably request documentation.

20. Does the 2022 COVID-19 Supplemental Paid Sick Leave law address specific situations in which an employer may request documentation before paying the employee?

Yes, in several situations.

First, the 2022 COVID-19 Supplemental Paid Sick Leave law permits the employer to seek documentation before paying an employee if an employee is using the COVID-19 Supplemental Paid Sick Leave that is only available after a positive test. In such circumstances, the employee must provide the test results upon the reasonable request of the employer. If the employee fails to provide the result of the test, then the employer may deny pay for any leave taken.

Second, when an employee uses more than three days or 24 hours for a single vaccine appointment and recovery from any related side effects, an employer may seek medical certification that the employee required more time to recover from those side effects. Medical certification in this context would likely be a note from a health care provider that the employee or family member continued to have vaccine side effects. See FAQ 23 below.

Finally, when seeking retroactive pay, please see FAQ 14.

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

No. An employee may take an over-the-counter rapid test (Antigen) or a test that is scheduled at a testing facility. The law does not specify type of test and does not place conditions on how the test is administered in order to qualify for leave.

22. Can the employer require an employee to get a COVID-19 test under the 2022 COVID-19 Supplemental Paid Sick Leave law?

Yes, in certain circumstances. The 2022 COVID-19 Supplemental Paid Sick Leave law provides that an employer may require a test after 5 days have passed since the employee tested positive for COVID-19. If the employee fails to take such a test required by the employer, the employer may deny pay for any leave taken after the time the employer provides the test. Any test required by the employer must be made available by the employer and at no cost to the employee. Making a test available means ensuring the employee has a rapid test in hand or securing an appointment at a testing facility for the employee. A test has not been made available by the employer if it has not been received by the employee.

23. Is an employer permitted to limit an employee to use 3 days or 24 hours of COVID-19 Supplemental Paid Sick Leave for the employee or a qualifying family member receiving a vaccine or vaccine booster and recovery from any related side effects?

Yes. If a covered employee requests leave to obtain a vaccine or a vaccine booster for themselves or for a qualifying family member and the time for getting the vaccine or vaccine booster combined with the time while the covered employee or qualifying family member is experiencing side effects exceeds three days or 24 hours of leave, the employer may require verification from a health care provider. This means that an employer may limit the leave taken to get a vaccine or a vaccine booster to three days or 24 hours unless the employee provides verification.

Medical verification in this context would likely be a note from a health care provider that the employee or family member continued to have vaccine side effects.

24. Can a covered employee use more than three days or 24 hours of leave if they or a family member for whom they are providing care receive more than one vaccine or vaccine boosters over the period the law is in effect?

Yes, the limitation applies to each vaccine or vaccine booster that the employee or their family member receives. For example, if a full-time covered employee received a vaccine booster the employee can use up to three days or 24 hours of leave from the 40 hours of leave that is available for this use. If the covered employee's child then has a vaccine appointment and the covered employee has not used leave from this bank for another allowed use, the employee has 16 hours of leave left that can be used for obtaining the vaccine for the child and for time needed to care for the child if any side effects require such care.

Credits

25. If an employer makes a “retroactive” payment as requested by the covered employee (see FAQ 11) on or after February 19, 2022 to a covered employee for leave taken before the date the 2022 COVID-19 Supplemental Paid Sick Leave law becomes effective, then does the employer receive any credit towards the requirement to provide 2022 COVID-19 Supplemental Paid Sick Leave?

Yes, the number of hours of leave corresponding to the amount of the retroactive payment counts toward the total number of hours of 2022 COVID-19 Supplemental Paid Sick Leave that the employer is required to provide to the covered employee (see FAQs 15-18), under the following circumstances:

- The retroactive payment is for leave taken by the covered employee between January 1, 2022 and February 19, 2022.
- The leave taken by the covered employee was for one of the qualifying reasons under the 2022 COVID-19 Supplemental Paid Sick Leave law (see FAQ 4), and
- The retroactive payment by the employer pays the covered employee the amount required under the 2022 COVID-19 Supplemental Paid Sick Leave law (see FAQs 15-18, 30).

26. If an employer voluntarily pays another supplemental benefit for COVID-19 related sick leave, including for leave that was taken before the 2022 COVID-19 Supplemental Paid Sick Leave law became effective, then may the employer receive a credit toward the requirements in the new 2022 COVID-19 Supplemental Paid Sick Leave law?

Yes, as long as the payment meets the requirements in the law. For example, an employer may have already voluntarily provided a covered employee with other COVID-19 related paid sick leave between January 1, 2022, and February 19, 2022. For an employer to receive a credit for those sick leave hours that the employer voluntarily paid, 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 the 2022 COVID-19 Supplemental Paid Sick Leave Law (see **FAQ 4**);
- 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 the 2022 COVID-19 Supplemental Paid Sick Leave law (see FAQs 15-18, 30).
 - If the employer paid for the leave taken at a lesser rate than what is required under the 2022 COVID-19 Supplemental Paid Sick

Leave law, then the employer may voluntarily make a retroactive payment to make up the difference between what was paid and what is required under the 2022 COVID-19 Supplemental Paid Sick Leave law, or must make the payment if a covered employee makes a written or oral request for it on or after February 19, 2022. If the employer chooses to voluntarily make a retroactive payment, the employer must make the decision whether or not to seek the credit and make payment to the worker on the payday for the first full pay period after February 19, 2022. This is because the employer must provide accurate notice on the itemized wage statement or separate writing of how many 2022 COVID-19 Supplemental Paid Sick leave hours worker has used on the payday for the first full pay period after February 19, 2022. The employer therefore must pay to the worker the difference between what was paid and what is required by the California 2022 COVID-19 Supplemental Paid Sick Leave law by that payday.

27. Can an employer count the COVID-19-related supplemental paid sick leave provided pursuant to a local paid sick leave ordinance toward 2022 COVID-19 Supplemental Paid Sick Leave 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, those 40 hours would count toward the employer's obligations under the 2022 COVID-19 Supplemental Paid Sick Leave law, so long as the leave provided is for a reason listed under the 2022 COVID-19 Supplemental Paid Sick Leave law and is at least at the same rate of pay as this law requires.

28. If a local law requires COVID-19 supplemental paid sick leave to be paid at a rate different from that required under California law, which rate must an employer use?

California law sets minimum requirements for 2022 COVID-19 Supplemental Paid Sick Leave and does not override local requirements for such leave. Thus, if an employer must provide COVID-19-related supplemental paid sick leave pursuant to a local law (and intends for that sick leave to count toward the requirements of California law), the employer must provide leave at a rate of pay that would ensure compliance with both the local law and California law, which would be the higher of the rates required. If an employer is uncertain as to how to calculate pay under a local ordinance, the employer should contact the relevant local jurisdiction for guidance.

29. If a covered employee used another type of leave, can the covered worker get that leave credited back and the leave taken for a purpose under the new law debited?

Yes, the new law is explicit in stating that if an employee was fully paid, but leave for the absence was deducted from another leave bank that the employer provides, the employee may request that leave be restored and the deduction be made in a corresponding amount from the employee's 2022 SPSL leave bank. The decision to restore used time is the employee's decision.

Payment of Leave, Record-Keeping, and Paystubs

30. At what wage rate must 2022 COVID-19 Supplemental Paid Sick Leave hours be paid?

For each hour of 2022 COVID-19 Supplemental Paid Sick Leave that a non-exempt covered employee is entitled to receive, the employee must be paid one of the following:

- The employee's regular rate of pay for the workweek in which the leave is taken
- A 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, provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, non-overtime wages shall be divided by all hours

2022 COVID-19 Supplemental Paid Sick Leave for exempt covered employees must be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

An employer is not required to pay more than \$511 per day and \$5,110 in the aggregate to a covered employee for 2022 COVID-19 Supplemental Paid Sick Leave taken by the covered employee, but the covered employee may utilize other paid leave that may be available in order to receive what they would normally earn if the cap is reached.

31. Should 2022 COVID-19 Supplemental Paid Sick Leave be listed separately from regular Paid Sick Leave on the itemized paystub or separate writing at the time wages are paid?

Yes. The 2022 COVID-19 Supplemental Paid Sick Leave law is clear that the obligation to provide COVID-19 Supplemental Paid Sick Leave is in addition to regular paid sick leave. The itemized wage statement or separate writing requirement ensures covered employees understand how many separate hours they have used for 2022 COVID-specific sick leave. The 2022 SPSL differs from 2021 SPSL in that the paystub must list what has been used instead of what is available to use. If no hours have yet been used then the paystub or other writing issued at the time wages are paid must indicate 0.

In addition, Labor Code Section 247.5 requires that records be kept for a three-year period on regular paid sick days and 2022 COVID-19 Supplemental Paid Sick days accrued and used, and that the records be made available to the Labor Commissioner or employee upon request.

Enforcement

32. What notice must employers provide to covered employees about 2022 COVID-19 Supplemental Paid Sick Leave under California law?

Under California law, employers are required to display the [required poster](#) about 2022 COVID-19 Supplemental Paid Sick Leave in a place at the worksite where employees can easily read it.

If an employer's covered employees do not frequent a workplace, the employer may satisfy the notice requirement by disseminating notice through electronic means.

33. Where can a covered employee file a claim if the covered employee was not allowed to use or was not paid for 2022 COVID-19 Supplemental Paid Sick Leave?

The covered employee may [file a claim](#) or a [report of a labor law violation](#) with the Labor Commissioner's Office, the state agency charged with enforcement.

34. What rights does a covered employee have if the covered employee suffers retaliation, like getting fired, for using paid sick leave under local, state or federal law?

Covered employees using or attempting to exercise their rights to 2022 COVID-19 Supplemental Paid Sick Leave, including both the right to paid leave and other rights such as timely payment and written notice of available leave, are protected from retaliation under Labor Code section 246.5(c). In addition, other labor laws enforced by the Labor Commissioner may protect covered employees from retaliation in this situation. Covered employees should seek assistance from the Labor Commissioner's Office if they have questions about retaliation or want to file a retaliation complaint.

Relation to Other Laws

35. Is 2022 COVID-19 Supplemental Paid Sick Leave different than the COVID-related paid sick leave that employers provided under the federal Families First Coronavirus Response Act (FFCRA) or the California COVID-19 Supplemental Paid Sick Leave laws in 2020 and 2021?

Yes. Both the FFCRA emergency paid sick leave and the 2020 California Supplemental Paid Sick Leave laws expired on December 31, 2020. The 2021 California Supplement Paid Sick Leave law expired on September 30, 2021. The new 2022 COVID-19 Supplemental Paid Sick Leave law

allows covered employees to take up to 40 hours of COVID-19 related sick leave during the period January 1, 2022 to September 30, 2022, regardless of whether they took leave under the previous laws. Employees may be able to take up to an additional 40 hours as discussed in **FAQ 4**.

36. Can an employer require that an employee use 2022 COVID-19 Supplemental Paid Sick Leave when they have excluded an employee for workplace exposure to COVID-19 as required by the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards?

No. When an employee is excluded by their employer and entitled to exclusion pay ([Exclusion Pay FAQ link](#)), an employer may not require the use of 2022 COVID-19 Supplemental Paid Sick Leave before providing exclusion pay. This is a change from the 2021 SPSL law, which did allow an employer to require an employee to exhaust SPSL before providing exclusion pay.

37. Can an employer use state disability insurance (SDI) to meet its obligation to provide COVID-19 Supplemental Paid Sick Leave?

No. Employers subject to the COVID-19 Supplemental Paid Sick Leave law cannot require covered employees to use SDI before or in lieu of 2022 COVID-19 Supplemental Paid Sick Leave.

A covered employee may apply, however, for SDI after taking the 2022 COVID-19 Supplemental Paid Sick Leave to which the covered employee is entitled. The Employment Development Department (EDD) administers SDI, which provides benefits that are approximately 60-70 percent of wages for eligible employees who are unable to work because they are sick or subject to an isolation or quarantine order or guidance. [More information on SDI](#) is posted on EDD's website.

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