

Information about COVID-19 Supplemental Paid Sick Leave

On February 9, 2022, [Senate Bill \(SB\) 114](#) was signed and is retroactive to January 1, 2022. SB 114, provides supplemental paid sick leave (SB 114 SPSL) to all employees for the reasons listed below.

SB 114 COVID-19 SPSL

SB 114 SPSL is separate from all previous COVID-19 sick leave benefits. The employer shall make this leave available to eligible employees upon the oral or written request of the employee to the employer.

Qualifying Reasons for SPSL

Employees may be eligible to take up to 40 hours of SB 114 SPSL if they are unable to work or telework due to any of the following reasons:

1. The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance of 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.
 - If the employee is subject to more than one of the above, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidance that provides the longest period; or
2. The employee is advised by a health care provider to isolate or self-quarantine due to a COVID-19 concern or tests positive; or
3. The employee is attending an appointment for themselves or a family member to receive a COVID-19 vaccine or vaccine booster that prevents the employee from being able to work or telework; or
4. The employee is experiencing symptoms or is caring for a family member related to a COVID-19 vaccine or vaccine booster that prevents the employee from being able to work or telework; or
 - For each vaccine or vaccine booster, paid sick leave for this purpose may be limited to three days or 24 hours unless the employee provides verification from a health care provider that the covered employee or their family member is continuing to experience symptoms. The limitation includes any time used under number 3 above to obtain the vaccine.
5. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; or
6. The employee is caring for a family member who is subject to an order or guidance under number 1 or who has been advised to isolate or quarantine under number 2; or
7. 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.

The employee's time base determines the number of SB 114 SPSL hours the employee is entitled to receive at their regular rate of pay:

- Full-time employees receive up to 40 hours.
- Part-time employees with a set time base receive a prorated amount based on their time base.
- Intermittent employees with a set weekly schedule will receive the number of hours normally scheduled for the workweek.
- Intermittent employees who work variable hours receive seven times the average number of hours worked each day during the preceding six months, up to 40 hours. The calculations are as follows:
 - To calculate the average number of hours worked by an intermittent employee with a variable schedule over the past six months, the figure is determined based on the total number of calendar days in the 6-month period, not the number of physical days worked.
 - For example: 520 (number of hours the employee worked in the six-month period) /182 days (number of days in a six-month period) = 2.857 average hours per day x 7 days = 20 hours. The employee is entitled to 20 hours of initial SB 114 SPSL.
 - If the intermittent employee has worked less than six months but more than 7 days, the calculation shall be made over the entire period the covered employee has worked. The figure is determined based on the total number of calendar days in the period the employee worked, not the number of physical days worked.
 - If the intermittent employee has worked less than 7 days, the employee is entitled to the number of hours worked for that period, but no more than 40 hours.

Additional SB 114 SPSL and Obligations

Employees may be eligible to take an additional amount of SB 114 SPSL not to exceed what the employee was entitled to in the above section, if the covered employee, or family member who the employee is caring for, tests positive for COVID-19.

If the employee tests positive, departments should follow current testing guidelines. Additionally, SB 114 allows the department to require employees who have tested positive to submit to a diagnostic test on or after the fifth day after the initial COVID-19 test was taken and provide documentation of these results. Importantly, in such a circumstance, the department shall make such a test available at no cost to the employee. Such test shall not be done at the worksite. Additionally, testing shall meet the requirements set forth in the Department of Industrial Relations, Division of Occupational Safety and Health, Emergency Temporary Standards (Cal/OSHA ETS). This means departments may need to reimburse the employee for any out-of-pocket expenses for the test.

If the employee requests additional SB 114 SPSL due to a positive test for a family member for whom they provide care for, the department may require that the employee provide documentation of that family member's test results before providing the

additional leave. A family member is defined in [California Labor Code, section 245.5, subdivision \(c\)](#) and includes child, parent, spouse, registered domestic partner, grandparent, grandchild, and sibling. Departments are not obligated to provide additional SB 114 SPSL to an employee who refuses to provide documentation outlined in this section.

The total number of SB 114 SPSL may not exceed 80 hours. In addition, this policy does not limit an employer's duties to comply with the Cal/OSHA ETS.

Availability and Retroactivity of SB 114 SPSL

The effective date of SB 114 SPSL is January 1, 2022. SB 114 SPSL shall be available to eligible employees immediately upon the oral or written request of the employee. Departments cannot require an eligible employee to use other leave.

Employees may retroactively use SB 114 SPSL back to January 1, 2022 upon verbal or written request by the employee, the employer shall provide the covered employee with a retroactive payment if the request meets one of the reasons listed above. Additionally, departments may require an employee to provide documentation of a positive diagnostic test for the relevant period of retroactive use. Retroactive use also requires an amended timesheet signed by the employee and their supervisor. Retroactive payments shall be paid to the employee on or before the payday for the next full pay period after the oral or written request of the employee.

If an eligible employee is otherwise entitled to receive Industrial Disability Leave (IDL) or Enhanced Industrial Disability Leave (EIDL), the use of SPSL shall not count against the employee's maximum IDL or EIDL entitlement. An eligible employee may receive SPSL during the waiting period for IDL or EIDL.

Employers shall not discharge, discipline, or otherwise discriminate against any employee based upon the employee's use of SB 114 SPSL.

Expiration

The SB 114 SPSL **expires on September 30, 2022**, except that a covered employee taking SB 114 SPSL at the time of expiration shall be permitted to take the full amount without interruption to which the employee otherwise would have been entitled in the section above.

Timesheet Documentation

Employees must clearly document on their timesheet in the comments section that SB 114 SPSL is being utilized. The documentation on the timesheet should clearly identify the reason leave is being used. For example: if leave is used due to a positive test or the employee is experiencing symptoms from the vaccine, it should be clearly stated in the comments section. In addition, the employee should document the time off as Administrative Time Off (ATO) for the applicable days and hours the leave is used.

Intermittent Leave Use

Eligible employees may use SB 114 SPSL leave intermittently if they are unable to work or telework to care for an employee's child whose school or place of care is closed (or

child care provider is unavailable) due to COVID-19 on the premises. Additionally, if an eligible employee who is teleworking away from the normal worksite is unable to work or telework due to any of the qualifying reasons the employee may use SB 114 SPSL intermittently. For example, SB 114 SPSL may be used in increments if the employee is teleworking due to exposure and subsequently becomes sick with COVID-19 and can no longer telework.

Additional Information

The Department of Human Resources, Personnel Services Branch is allowing departments to use their ATO delegation and provide employees time off to obtain their COVID-19 vaccines, including any COVID-19 booster vaccine recommendations. This information remains unchanged and departments should still provide ATO for this purpose. ATO for this purpose is not counted against the employees SB 114 SPSL entitlement.