



## DIOCESE OF SACRAMENTO

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### LAY PERSONNEL

February 14, 2022

To: Pastors, Parochial Administrators, Parish Stewards, Agency Directors, Office Managers, and School Principals

FR: Anna Schiele

RE: **New California COVID-19 Supplemental Paid Sick Leave per Senate Bill 114**

On February 9, 2022, Governor Gavin Newsom signed into law Senate Bill 114 (SB 114/AB 84), providing another COVID-19 Supplemental Paid Sick Leave (“SPSL”). While the new legislation (SB-114/AB-84) is similar to the previous SPSL law there are several changes. Most notably, the new SPSL is provided in two leave banks, and employers may now require documentation for leave taken based on an employee’s or a family member’s positive COVID test and also require follow up testing for employees.

The new law will be effective on **February 19, 2022** and it will apply retroactively to covered leaves dating back to **January 1, 2022**. The law will remain in effect until September 30, 2022. Employees who start leave prior to that date may take the full amount of leave even if it extends beyond the expiration of the statute.

#### **Two Distinguished Supplemental Paid Sick Leave Banks:**

- 1) ***COVID Qualifying Reasons Bank*** - The first SPSL bank provides up to 40 hours to employees who are unable to work or telework for any of the following reasons:
  - a) The employee is subject to a quarantine or isolation period related to COVID-19
  - b) The employee has been advised by a health care provider to isolate or quarantine due to COVID-19.
  - c) The employee is attending an appointment for themselves or a family member to receive a COVID-19 vaccine or a vaccine booster
  - d) The employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine booster that prevent the employee from being able to work or telework. (Employers may limit the SPSL taken for each vaccine to 3 days or 24 hours, unless the employee provides verification from a health care provider that the employee is continuing to experience symptoms.)
  - e) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - f) The employee is caring for a family member who is subject to an isolation or quarantine order or has been advised by a health care provider to isolate or quarantine due to COVID-19.
  - g) 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.
  
- 2) ***Positive COVID-19 PCR Tests Bank*** - The second SPSL bank provides up to 40 hours to employees who are unable to work or telework because the employee or family member, for whom the employee provides care, tests positive for COVID-19.
  - a) **To use this additional bank of sick hours the following documentation is required:**

- i) Employees taking leave for their own positive COVID-19 tests may be required to (1) submit to a COVID-19 test on or after the fifth day after the employee’s positive test and (2) provide the employer with documentation of those results. Employers must make the COVID-19 tests available at no cost to the employee.
- ii) Employees who take leave to provide care for family members who have tested positive for COVID-19 may be required to provide the employer with documentation of the family member’s test results in order to receive the additional leave.

Employers are not required to provide this additional SPSL to employees who refuse to provide documentation of the positive COVID-19 PCR test results when requested by the employer.

**Note:** Employees are not required to exhaust their leave under the first bank prior to using the second bank.

**Determining the Number of Hours of CA COVID-19 Supplemental Sick Leave for Each Employee:**

- Full-time employees (working a 40 hour work week): 80 hours at their regular rate of pay.
- Full-time employees (working a 35 hour work week): 70 hours at their regular rate of pay.
- Part-time employees: the number of hours that the employee works, on average, over a two-week period.
- Employees working a variable number of hours (occasional part-time employees on a non-fixed weekly schedule) are entitled to supplemental paid sick leave equal to 7 times the average number of hours worked each day in the six months preceding the date that leave was required. Please refer to the following formula to determine the number of hours the employee is eligible for:

<b>Total Number of Hours Worked During 6-Month Period</b>	520 Hours
<b>Total Number of Days in 6-Month Period</b>	182 Days
<b>Average Number of Hours Worked Each Day in 6-Month Period</b>	520 hours ÷ 182 days = 2.857 hours
<b>2022 CA COVID-19 Supplemental Paid Sick Leave Entitlement</b>	2.857 x 7 = 19.999 hours

**Retroactive Application Requirements:**

SPSL is retroactive to January 1, 2022. So, if an employee took leave dating back to the first of the year for one of the qualifying reasons that was either unpaid by the employer or not paid at the same level required by SPSL, the employee may make an oral or written request for retroactive payments.

In addition, SPSL provides that an employer may require an employee to provide documentation of a positive PCR test if the employee requests retroactive leave for a positive test or caring for a family member with a positive test.

**Interaction of California COVID-19 Supplement Paid Sick Leave and Cal OSHA Exclusion Pay:**

Employers are no longer allowed to require employees to first use and exhaust their SPSL during periods the employee is entitled to “exclusion pay” under Cal/OSHA’s ETS. The legislation states, “An employer shall not require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under this section before satisfying any requirement to provide paid leave for reasons related to

COVID-19 under any Cal-OSHA COVID-19 Emergency Temporary Standards.”

With certain exceptions, Cal/OSHA’s ETS requires employers to continue to pay the earnings of employees who are excluded from the workplace as a COVID-19 case or close contact. This means employers may be required to provide significantly more paid time off for employees because employees who are excluded under Cal/OSHA’s ETS will be paid exclusion pay and maintain their full entitlement of SPSL.

**Required Updates to Paystubs:**

COVID-19 Supplemental Paid Sick Leave that has been used by an employee must be listed separately from regular Paid Sick Leave on the itemized paystub. In addition, opposed to posting the employees’ available balance of COVID-19 Supplemental Paid Sick Leave, the employer must post the number of hours of COVID-19 Supplemental Paid Sick Leave that the employee has used through the applicable pay period on the paystub. If an employee has not used any COVID-19 Supplemental Paid Sick Leave, the employer shall list zero hours on the paystub. This should reduce the burden on employers from having to make complicated calculations each pay period (as required under the prior law).

**Note:** We are currently working with ADP to establish a payroll code to utilize and to address the required documentation on employee paystubs. Further communication to follow as it is released from ADP.

**Required Posting and Communication of the New Law:**

All employee should be made aware of their new right. The attached posting will need to be provided to each employee (you may send this posting electronically). In addition, a copy of the posting will need to be posted near your Federal and State Postings (also known as Breakroom Postings).

Failure to comply with these requirements may subject the employer to a civil penalty.

**Tax Credits:**

There are no direct tax credits available for SPSL. While the governor and legislative leaders discussed tax credits being part of the agreement to bring back SPSL, the referenced tax credits are not directly tied to SPSL, nor do they provide “dollar for dollar” reimbursement like under the federal FFCRA.

The agreement restores net operating loss deductions for corporate and individual taxpayers with business income of \$1 million or more, which had been paused for tax years 2020, 2021 and 2022 and extended by three years. The state will also lift a \$5-million limit on several other business tax credits (including for research and development) for those same tax years. Not all businesses are eligible for these tax credits.

So while the state is bringing back some tax credits that may provide general relief for some businesses in the state, there is not a direct tax credit that reimburses employers specifically for their SPSL costs.

**Additional Resources:**

The California Department of Industrial Relations has not yet provided an expanded FAQ’s Document. As soon as the document is released we will provide it to you for your use.

If you have any questions or concerns, please feel free to contact the Office of Lay Personnel at 916-733-0239.